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Court No.71
Reserved on 6.6.2024
Delivered on 1.8.2024
AFR

Case :- ORIGINAL SUIT No. - 1 of 2023

Plaintiff :- Bhagwan Shrikrishna Virajman At Katra Keshav Dev Khewat No. 255 And 7 Others
Defendant :- U.P. Sunni Central Waqf Board And 3 Others
Counsel for Plaintiff :- Prabhash Pandey,Pradeep Kumar Sharma
Counsel for Defendant :- Gulrez Khan,Hare Ram,Nasiruzzaman,Punit Kumar Gupta

AND

Case :- ORIGINAL SUIT No. - 2 of 2023
Plaintiff :- Bhagwan Shri. Krishna Virajman Through Manish Yadav And Another
Defendant :- U.P. Sunni Central Waqf Board And 3 Others
Counsel for Plaintiff :- Harshit Gupta,Rakesh Kumar,Ramanand Gupta
Counsel for Defendant :- Hare Ram,Nasiruzzaman,Pranav Ojha

AND

Case :- ORIGINAL SUIT No. - 4 of 2023
Plaintiff :- Shrikrishna Janmbhoomi Mukti Nirmaan Trust And 5 Others
Defendant :- Shahi Masjid Eidgah Management Committee And 3 Others
Counsel for Plaintiff :- Alok Kumar Dubey,Ashutosh Pandey (In Person),Vinay Sharma
Counsel for Defendant :- Hare Ram,Nasiruzzaman,Pranav Ojha

AND

Case :- ORIGINAL SUIT No. - 5 of 2023
Plaintiff :- Gopal Giri Maharaj And Another
Defendant :- U.P. Sunni Central Waqf Board And 3 Others
Counsel for Plaintiff :- Bindeshwari Prasad Mishra
Counsel for Defendant :- Nasiruzzaman

AND

Case :- ORIGINAL SUIT No. - 6 of 2023
Plaintiff :- Bhagwan Baal Shree Krishn Virajmaan Thakur Keshav Dev Ji Maharaj And 2 Others
Defendant :- Intjamiyan Committee And 3 Others
Counsel for Plaintiff :- Anshul Kumar Singhal,Gopal Srivastava,Saurabh Basu
Counsel for Defendant :- Hare Ram,Nasiruzzaman,Pranav Ojha

AND

Case :- ORIGINAL SUIT No. - 7 of 2023
Plaintiff :- Shri Bhagwan Shrikrishna Lala Virajman And 4 Others
Defendant :- U.P. Sunni Central Waqf Board 3a And 3 Others
Counsel for Plaintiff :- Amit Kumar,Anil Kumar Singh,Anil Kumar Singh Bishen,Damodar Singh,Devendra Vikram Singh,Leena Srivastava,Mahendra Pal Singh Gaur,Naman Kishor Sharma,R.U. Rinki Renu,Rana Singh,Suman Srivastava,Vivekanand Yadav
Counsel for Defendant :- Hare Ram,Nasiruzzaman,Pranav Ojha,Punit Kumar Gupta

AND

Case :- ORIGINAL SUIT No. - 9 of 2023
Plaintiff :- Bhagwaan Shree Baal Krishn Keshav Dev Virajmaan Khewat No. 255 And 6 Others
Defendant :- U.P. Sunni Central Waqf Board And 3 Others
Counsel for Plaintiff :- Amitabh Trivedi,Arya Suman Pandey
Counsel for Defendant :- Hare Ram,Pranav Ojha

AND

Case :- ORIGINAL SUIT No. - 11 of 2023
Plaintiff :- Shrikrishna Bhagwan Alias Shrikrishn Lala Alias Thakur Keshavdev Ji Maharaj And 2 Others
Defendant :- U.P. Sunni Central Waqf Board And 3 Others
Counsel for Plaintiff :- Jawahir Yadav
Counsel for Defendant :- Hare Ram,Nasiruzzaman,Pranav Ojha

AND

Case :- ORIGINAL SUIT No. - 12 of 2023
Plaintiff :- Thakur Keshav Dev Ji Maharaj Virajmaan Mandir Katra Keshavdev Mathura And Another
Defendant :- U.P. Sunni Central Waqf Board And 3 Others
Counsel for Plaintiff :- Awadhesh Kumar Malviya,Kumar Beenu Singh
Counsel for Defendant :- Hare Ram,Nasiruzzaman,Pranav Ojha

AND

Case :- ORIGINAL SUIT No. - 13 of 2023
Plaintiff :- Thakur Keshavdev Ji Maharaj Virajmaan Mandir Katra Keshavdev And 4 Others
Defendant :- Intjamiyan Committe And 3 Others
Counsel for Plaintiff :- Radheshyam Yadav,Rama Goel Bansal,Ravi Shanker Pathak,Shalini Goel
Counsel for Defendant :- Hare Ram,Pranav Ojha

AND

Case :- ORIGINAL SUIT No. - 14 of 2023
Plaintiff :- Thakur Keshavdev Ji Maharaj Virajmaan Mandir Katra Keshavdev
Defendant :- Intjamiyan Committee Shahi Masjid Idgaah And 3 Others
Counsel for Plaintiff :- Awadhesh Kumar Malviya,Kumar Beenu Singh
Counsel for Defendant :- Hare Ram,Pranav Ojha

AND

Case :- ORIGINAL SUIT No. - 15 of 2023
Plaintiff :- Thakur Keshav Dev Ji Maharaj Virajmaan Mandir Katra Keshavdev Mathura And Another
Defendant :- U.P. Sunni Central Waqf Board And 4 Others
Counsel for Plaintiff :- Brahma Kumar Tiwari,Raj Narayan
Counsel for Defendant :- Hare Ram,Pranav Ojha

AND

Case :- ORIGINAL SUIT No. - 16 of 2023
Plaintiff :- Devta Bhagwan Shri Krishna Lala Virajman Also Known As Shri Keshav Dev Ji Maharaj And 6 Others
Defendant :- C/M, Trust Of Alleged Shahi Masjid Idgah And 3 Others
Counsel for Plaintiff :- Prabhash Pandey
Counsel for Defendant :- Nasiruzzaman,Pranav Ojha,Punit Kumar Gupta

AND

Case :- ORIGINAL SUIT No. - 18 of 2023
Plaintiff :- Bhagwan Bal Krishna Keshav Dev Virajman Garbh Griha And Another
Defendant :- C/M Trust Alleged Shahi Idgah And Another
Counsel for Defendant :- Hare Ram,Pranav Ojha

With:

Case :- ORIGINAL SUIT No. - 17 of 2023
Plaintiff :- Bhagwan Shri Krishna (Thakur Keshav Dev Ji Maharaj) Virajman And 4 Others
Defendant :- Anjuman Islamia Committee Of Shahi Masjid Idgah And 7 Others
Counsel for Plaintiff :- Ajay Kumar Singh,Ashish Kumar Singh,Tejas Singh
Counsel for Defendant :- Hare Ram,Pranav Ojha

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HON'BLE MAYANK KUMAR JAIN, J.

1. Heard S/Sri C.S. Vaidyanathan, learned Senior Counsel, Hari Shanker Jain, Vishnu Shanker Jain, assisted by Ms. Mani Munjal and Mr Parth Yadav, Rahul Sahai, learned Senior Counsel, Anil Kumar Airi, learned Senior Counsel, Mahendra Pratap Singh, Saurabh Tiwari, Ajay Kumar Singh, Hare Ram Tripathi, Prabhash Pandey, Pradeep Kumar Sharma, Vinay Sharma, Gaurav Kumar, Siddharth Srivastava, Anil Ku-

mar Singh, Ashish Kumar Srivastava, Ashvanee Kumar Srivastava, Satyaveer Singh, Dr. Dharmesh Chaturvedi, Arya Suman Pandey, Rama Nand Gupta, Harshit Gupta, Saurabh Basu, Gopal Srivastava, Anil Kumar Bisen, Ajay Pratap Singh, Rana Singh, Amit Kumar, Naman Kishore Sharma, Jawahar Yadav, Kumar Beenu Singh, Aniruddh Tiwari, Ugrasen Kumar Pandey, Radhey Shyam Yadav, Brahm Kumar Tiwari, Mayank Singh, Tejas Singh, Alok Dubey, Kumar Anish, A. K. Malviya, Amitabh Trivedi, Rajesh Kumar Shukla, Mrs. Rama Goyal Bansal and Mrs. Reena N Singh, learned Counsel for the plaintiffs. S/Sri Rajendra Maheshwari, Advocate and Ashutosh Pandey, appearing in person.

Mrs. Tasneem Ahmadi, S/Sri Mehmood Pracha, Nasiruzzaman, Pranav Ojha, Hare Ram Tripathi, Manoj Kumar Singh, Afzal Ahmad, Tanveer Ahmad and Imran, learned Counsel for the defendants.

2. Original Suits No.1 to 18 of 2023, which were filed by respective plaintiffs before the Court of Civil Judge (Senior Division), Mathura, stand transferred to this Court, pursuant to order dated 26.05.2023 passed by this Court in Transfer Application (Civil) No.88 of 2023 (**Bhagwan Shrikrishna Virajman and 7 Others vs. U.P Sunni Central Waqf Board and 3 Others)**.

3. Original Suits No.17 and 18 of 2023, stand transferred to this Court, pursuant to order dated 16.11.2023 passed in Original Suit No.1 of 2023 on the basis of the report submitted by the District Judge, Mathura.

4. Vide order dated 06.10.2023 passed by Hon'ble the Chief Justice, Allahabad High Court, these suits were nominated to this Bench.

5. Committee of Management, Trust Alleged Shahi Masjid Idgah[1] and U.P. Sunni Central Waqf Board[2], arrayed as defendants in OSUT No.1 of 2023 **(Bhagwan Shrikrishna Virajman At Katra Keshav Dev Khewat No. 255 and 7 Others vs. U.P. Sunni Central Waqf Board And 3 Oth-**

1 hereinafter referred to as 'the Committee'
2 hereinafter referred to as 'the Waqf Board'

ers), have filed applications (numbered as **A-17, A-18 and A-37**) under Order VII Rule 11 (d) read with Section 151 of the Civil Procedure Code, 1908[3] *inter alia*, praying to reject the plaints as suit filed by the plaintiffs is barred by the provisions of various statutes.

6. During the pendency of the above applications, an application under Order XXVI Rules 9 and 10 read with Section 151 of the CPC was moved on behalf of the plaintiffs in OSUT No.1 of 2023 for appointment of a panel of three advocates as commission, seeking the following relief:-

> *"A. Appoint a commission consisting of three advocates with direction to submit report in the light of the averment made in the suit and in this application and that entire commission proceeding be photographed and video-graphed and the report be submitted in the time provided by the Hon'ble Court;*
>
> *B. Police protection may be directed to be provided by the District administration and to maintain law and order situation during the survey proceeding."*

7. The matter was heard by this Court on the following issues:-

> a. Whether an application for rejection of plaint should be decided prior to the application for appointment of a commission.
>
> b. Application for appointment of commission under Order XXVI Rules 9 and 10 of the CPC. (Application No.130 C)

8. This Court, vide its order dated 14.12.2023, concluded that an application for appointment of commission can be decided first in order and,

3 for short, 'the CPC'

therefore, allowed such application. It was also observed that the modalities and composition of the commission would be decided after hearing learned Counsel for the parties for such purpose.

9. Aggrieved by this order, the Committee filed a **Special Leave petition No.481/2024: Committee of Management, Trust Shahi Masjid Idgah Vs Bhagwan Shrikrishna Virajman & Ors.** Following orders were passed by the Hon'ble Apex Court:

> *"Legal issues arise for consideration including the question in the light of judgment passed by this Court in Civil Appeal No.9695 of 2013 titled "Asma Lateef & Anr. vs. Shabbir Ahmad & Ors."*
>
> *The proceedings before the High Court will continue. However, the Commission will not be executed till the next date of hearing."*

10. Thus, the proceedings in respective suits were taken up. OSUT No. 01, 02, 04, 05, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, and 18, were consolidated by this Court under Order IV-A of the CPC, vide its order dated 11.01.2024. **OSUT No.01 of 2023 was made as leading case.** OSUT No.03, 10, and 17 were not consolidated.

11. The Committee and the Waqf Board, arrayed as defendants in respective suits, filed applications under Order VII Rule 11(d), read with Section 151 of CPC in most of the cases and in some cases, applications under Order VII Rule 11 of the CPC, read with Section 151 of the CPC, which are numbered as A-17, A-18, A-37 in OSUT No.1 of 2023; C-57 and C-69 in OSUT No.2 of 2023; C-20 and C-45 in OSUT No.4 of 2023; 14-Ka and A-14 in OSUT No.5 of 2023; A-20, A-30 and A-32 in OSUT No.6 of 2023; A-16 and A-39 in OSUT No.7 of 2023; A-21, A-22 and C-23 in OSUT No.9 of 2023; A-9 in OSUT No.11 of 2023; C-30 and C-49

in OSUT No.12 of 2023; C-36 and A-46 in OSUT No.13 of 2023; C-18 and C-23 in OSUT No.14 of 2023; C-12 and C-22 in OSUT No.15 of 2023; A-7, A-17 and A-18 in OSUT No.16 of 2023; A-14 in OSUT No.17 of 2023; and A-7 in OSUT No.18 of 2023).

The aforesaid applications, include the applications moved in the Court of Civil Judge, Senior Division, Mathura.

12. It is averred in the applications that the plaint is liable to be rejected since it does not disclose any cause of action and the suits of the plaintiffs are barred under certain statutes.

13. For proper appreciation of facts to decide the maintainability of suits under Order VII Rule 11 read with Section 151 of CPC, it would be germane to summarize the facts set out by the plaintiffs in their respective plaints. They are as under: -

i. Lord Shree Krishna is the incarnation of Lord Vishnu. He took birth in human form on the day of Ashtami, Krishna Paksha in Bhadrapad month about 5132 years ago during Dwaparyug in the prison *(Karagaar)* at Mathura in *Virishni* Kingdom ruled by King Kans. The place was known as '**Katra Keshav Dev'**. Hindu devotees have been worshipping the birthplace of Lord Shree Krishna for a considerably long time. The property of Katra Keshav Dev is vested in the deity Lord Shree Krishna for thousands of years. The birthplace of Lord Shree Krishna is a religious and cultural heritage of India. Crores of Hindu devotees have been worshipping Lord Shree Krishna across the world for thousands of years. The devotees feel the divine presence of Lord Shree Krishna at **Shree Krishna Janmabhoomi, Mathura**. They receive the bounty and blessings of Lord Shree Krishna by offering their prayers.

ii. Shri Brajnabha, the great grandson of Lord Shree Krishna constructed the first temple at the Janamsthan (the birthplace of

Lord Shree Krishna) about 5000 years ago. It was demolished by Muslim invaders and was rebuilt and renovated by Hindu devotees from time to time. In 400 A.D., Chandra Gupta Vikramaditya renovated it by raising a glorious temple to commemorate Lord Shree Krishna.

iii. In 1017, intruder Mahmood Ghaznavi demolished this temple. During the reign of Maharaja Vijayapal Deva, ruler of Mathura, in 1150 A.D., a Hindu Jatt namely, Jajjan @ Jujj Singh renovated and constructed the temple. This temple was again demolished by intruder Sikander Lodhi during his reign from 1489 to 1517 A.D.

iv. During the reign of Raja Veer Singh Bundela of Orchha in 1618, a 250 feet high temple was constructed with financial outlay of Rs.33 lakhs. A fortified boundary was also raised around the temple.

v. In 1669-70, Aurangzeb, the Mughal ruler, partially demolished the temple and forcibly constructed a lofty mosque which was named as **'Idgah Mosque'**. Idols of the temples were brought to Agra and buried under the steps of Begum Shahi Mosque to be continually trodden upon. The recital of such demolition finds place in paras 95-96 of the book titled "*Massir-i-Alamgiri"* by the scribe of Aurangzeb, Saqi Mustad Khan which are quoted here:-

> "*During this month of Ramzam (1080 A.H./13th January – 11st February 1670) abounding in miracles, the Emperor, as the promoter of justice and over thrower of mischief, as a knower of truth and destroyer of operation, as the zephyr of the garden of victory and the reviver of the faith of the Prophet, issued orders for the demolition of the*

temple situated in Mathura, famous as the Dehra of Keshao Rai."

"In a short time, by the great exertions of his officers, the destruction of this strong foundation of infidelity was accomplished.

The idols, large and small, set with costly jewels, which had been set up in the temple, were brought to Agra, and buried under the steps of the mosque of the Begam Sahib, in order to be constantly trodden upon. The name of Mathura was changed to Islamabad."

vi. Jadunath Sarkar, a renowned Indian Historian authored "*Historical Essays*" wherein he wrote:-

"the richly jeweled deities were taken to Agra, where they were placed beneath the footsteps leading to the Nawab Begum Sahib's (Jahanara's) mosque so they could be trampled under the feet of Muslims. At that time, the name of Mathura was also changed to Islamabad for having destroyed the very foundation of deity worship. ... The grandest shrine of Mathura, i.e. Kesav Rai's Mandir, built at the cost of Rs.33 lacs by the Bundela Raja Birsingh Dev, was razed to the ground and reduced to rubbles in January, 1670, a huge mosque built on the site. The idols were brought to Agra and buried under the footsteps of Jahanara's mosque that they might be constantly trodden on by the Muslims going into pray."

vii. The excerpt from the book '*Anecdotes of Aurangzeb'* by Shri Jadunath Sarkar, reads thus:-

> *"Meanwhile, Aurangzeb had begun to give free play to his religious bigotry. In April, 1669, he ordered the Provincial Governors to destroy the Mandirs and Schools of Brahmins ... And to utterly put down the teaching and religions practices of the infidels. The wandering Hindu Saint Udhav Bairagi was confined in Police lock up. The Vishwanath Mandir at Benares was pull down in September 1669."*

viii. After winning the battle of Govardhan, Marathas became the rulers of the entire area of Agra and Mathura. They removed the structure of the Mosque and restored/renovated the temple at the birthplace of Lord Shree Krishna at Katra Keshav Dev. The entire land of Agra and Mathura was declared as *nazool* land.

ix. In 1803, the East India Company conquered the areas of Mathura and Agra by defeating the Marathas and the became the ruler of this area. The land of Agra and Mathura continued to be treated as *nazool* land.

x. In 1815, the land measuring **13.37 acres of Katra Keshav Dev** was put for an auction sale by the British Government. Raja Patnimal of Benaras purchased the land and acquired the possession and ownership of the land. Thereafter, several cases were filed by the Muslims questioning the auction sale, ownership, and possession of Raja Patnimal, but all were dismissed.

xi. In the settlement map of 1860, the above property was described as Katra Keshav Dev.

xii. In different Court proceedings, six decrees were passed in favour of Raja Narsingh Das, the descendant of Raja Patnimal in respect of the above property. Civil Suit No. 76 of 1920 was filed by the Muslims claiming that plaintiffs were not in possession. It was held that the disputed land did not belong to the Mosque and the Hindu defendants were rebuilding the temple on such land. The suit was dismissed. Against this judgment and order, First Appeal No.236 of 1921 was also dismissed.

xiii. Rai Kishan Das, the heir of Raja Patnimal, instituted Civil Suit No. 517 of 1928. The ownership and the possession of the plaintiff were decided in their favour. Second Appeal No.691 of 1932 was decided by this Court on 02.12.1935. Raja Patnimal and his heirs were affirmed to be the rightful owners of the property. It was also held that Muslims had no right over any part of the suit property.

xiv. Rai Kishan Das and Rai Anand Krishna, executed sale deed dated 08.02.1944 of the land situated in Katra Keshav Dev in favour of Mahamana Pandit Madan Mohan Malviya, Goswami Ganesh Dutt and Bhikenlal Ji Aattrey for a consideration of Rs. 13,400/-, which was paid by Sri Jugal Kishore Birla. Thus, the title and possession were transferred to the purchasers.

xv. Civil Suit No. 4 of 1946 was filed on behalf of the Committee against Mahamana Pandit Madan Mohan Malviya and others, questioning the validity of the sale deed dated 08.02.1944, *inter alia,* claiming the right of '*pre-emption'*. The suit was dismissed based on a compromise directing that the judgment dated 02.12.1935 passed by this Court in Second Appeal No. 691 of 1932, would be binding upon the parties.

xvi. Shri Jugal Kishore Birla, to fulfill his pledge and to construct a lofty and glorious temple at the birthplace of Lord Shree Krishna situated in the Katra Keshav Dev, created a trust in the name of **'Shree Krishna Janmabhoomi Trust'**[4] on 21.02.1951 through a registered trust deed dated 09.03.1951. The entire property was dedicated and vested in the Janmabhoomi Trust. It was also decided that the Janmabhoomi Trust would impart spiritual and religious education. Movable and immovable property of the Janmabhoomi Trust shall be used only for the Janmabhoomi Trust and no person will have any personal interest. The Janmabhoomi Trust property would not be sold or pledged.

xvii. Unfortunately, the Janmabhoomi Trust failed to perform its duty to secure, preserve and protect the Janmabhoomi Trust property. It became defunct in 1958.

xviii. A society known as **'Shree Krishna Janamsthan Sewa Sangh'**[5] was formed on 01.05.1958. After 1977, the word ***'Sangh'*** was substituted with ***'Sansthan'***. Sewa Sansthan was a separate entity from the Janmabhoomi Trust. It had no power or jurisdiction to act on behalf of the Janmabhoomi Trust. The property vested in the Janmabhoomi Trust was never transferred, entrusted, vested, dedicated or given in any manner to Sewa Sansthan.

xix. Several other litigations filed by Intezamia Committee of Masjid and other Muslims, claiming their title over various portions of Katra Keshav Dev were dismissed, including subsequent appeals.

xx. The Committee and other Muslims filed Civil Suit no. 361 of 1959 against the plaintiffs, alleging that certain properties entered in the assessment register of the water tax of Municipality of Ma-

4 hereinafter referred to as 'the Janmabhoomi Trust'
5 Hereinafter referred to as ' Sewa Sansthan'

thura have been purchased by them through different sale deeds in 1955 from certain Muslims residing in Katra Keshav Dev. They used to refer it as Katra Idgah. All the suits were dismissed and it was held that Trust Masjid Idgah was not the owner of the property and had no right to execute the sale deed.

xxi. Some Muslims were residing in Katra Keshav Dev. They raised sheds (*chapper)* and other temporary construction. The Hindu authority at that time revoked their license and directed them to remove the material and to deliver the possession.

xxii. Civil Suit No.210 of 1964 was filed in the Court of Munsif, Mathura on 16.05.1964 titled as **'Shree Krishna Janamsthan Seva Sangh, Mathura also known as Shree Krishna Janambhumi Trust Mathura and ors. v. Trust Masjid Idgah under the alleged Committee of Management and ors.'** Shri Bhagwan Das Bhargava verified the plaint in the capacity of Joint Secretary of the plaintiff.

xxiii. The plaint of the aforesaid suit was returned to the plaintiff on 06.09.1967 for its presentation before a competent Court. In turn, it was filed in the Court of Civil Judge, Mathura, and was registered as Suit No. 43 of 1967 **'Shree Krishna Janamsthan Seva Sangh, Mathura also known as Shree Krishna Janambhumi Trust Mathura and ors. v. Trust Masjid Idgah under the alleged Committee of Management and ors.'**

xxiv. In the above suit, it was averred that the plaintiffs were the owner, Zamindar and in possession of the entire Khewat no. 255, area of the 13.37 acres known as Katra Keshav Dev. They were regularly paying taxes. The execution of sale deed dated 08.02.1944 in favour of Mahamana Pt. Madan Moham Malviya and others was admitted. It was averred that Seth Jugal Kishore

Birla created a trust known as 'Shree Krishna Janmabhoomi Trust' but it was wrongly averred that this trust was registerd in the name of 'Shri Krishan Janamsthan Sewa Sangh'. Further, it was also wrongly averred that Shri Jugal Kishore Birla endowed the entire rights and interests in the property through a trust deed dated 21.02.1951 to the plaintiffs of that suit.

xxv. In the aforesaid suit, the following relief was claimed:-

> ***"That a decree for possession of the land after removal of the super-structures detailed below, and more particulars delineated in the site plan hereto, be passed in favour of the plaintiff and against the defendants, and the defendants be given time as may be fixed by the court for the removal of the superstructures and in case they failed to remove the superstructures the same may be ordered to be removed in execution proceedings through the Court Amin."***

xxvi. In the above suit, a fraudulent and illegal compromise was entered into between Sewa Sansthan and the Committee, under the alleged permission of the Waqf Board. The compromise was filed on 12.10.1968. The suit was decided vide judgment and decree dated 20.07.1973 and 07.11.1974 in terms of the compromise. The terms of the compromise deed were as follows:

> ***(i) There was dispute between Shri Krishna Janamsthan Seva Sangh and Trust Shahi Masjid Idgah and certain Muslims Ghosi etc. who claimed to be tenants of trust Shahi Masjid or licensee and many civil and criminal cases were pending.***

(ii) The defendant has obtained permission of the Waqf Board communicated through express letter No.2876/43 (Two Thousand Seventy Six/ Forty Three) - C-VAD-DHARA dated 9.9.1968 (Nine Nine Nineteen Sixty Eight) and the meeting dated 8.10.1968 (Eight Ten Nineteen Sixty Eight) they have adopted the agreement and authorized to Mohammad Shahmir Masih and Abdul Gaffar Advocate to represent them.

(iii) The Northern and Southern wall of the "Kachhi Kurshi" of the Idgah be extended on the East upto the Railway line by Trust Shahi Masjid Idgah.

(iv) The Trust Shahi Masjid Idgah shall get vacated the inhabitant Muslim Ghosis, etc. outside the wall on North and South side and deliver to Shri Janmsthan Sewa Sangh and will have no concern with its ownership and it will deemed to be the property of first party. Shree Krishna Janmsthan Sewa Sangh will have no concern with the ownership of the land within the Northern walls and it will be deemed to be the property of second party.

(v) That the land on the Western-Northern Corner of "Kachchi Kursi" of Idgah is of Shree Krishna Janmsthan Sewa Sangh and has been shown by A, B, C, D in the plan, and Trust Shahi Masjid Idgah will rectangularise its "Kachchi Kursi" and it will be deemed to be its property.

(vi) By 15th (Fifteen) October, 1968 (Nineteen Sixty Eight) Trust Shahi Masjid Idgah will remove the rubble of stairs on Southern side which is subject of the litigation, and Shree Krishna Janmsthan Sewa Sangh will have possession over that land.

(vii) After getting possession of houses Ghosis, Muslim inhabitants etc. outside the Northern and Southern walls the possession will be delivered to Shree Krishna Janmsthan Sewa Sangh by Trust Shahi Masjid Idgah by 15th (Fifteen) October, 1968 (Nineteen Sixty Eight) and only thereafter it will construct the walls etc. Trust Shahi Masjid Idgah will not affix any door, window, or grill in these walls or the walls of "Kachchi Kursi" towards the Shree Krishna Janmsthan Sewa Sangh and neither it will open any drain or water outlet toward Shree Krishna Janmsthan Sewa Sangh. Similarly, Shree Krishna Janmsthan Sewa Sangh will also not do any such work.

(viii) Shri Krishna Janmsthan Seva Sangh, will at its own cost, divert the water of the outlets of Idgah on the Western side, towards the Shri Krishna Janmsthan Seva Sangh on the "Kachchi Kursi" of Idgah, by fixing pipes at its own cost and thereafter by constructing a masonry drain at its own cost reach the water towards the East upto Eastern door of the Masjid upto the edge of the "Kachchi Kursi". Trust Shahi Masjid Idgah will have no objection in fixing the pipes in the walls

of Masjid Idgah. Representative of Trust Shahi Masjid Idgah will accompany during completion of this work and his advise will be accepted.

(ix) Shri Krishna Janmsthan Seva Sangh after acquisition, will deliver, to Trust Shahi Masjid Idgah, the land which will fall in front of the Idgah inside the North and South walls, from the railway land which Shri Krishna Jansthan Seva Sangh is getting acquired; and it will be deemed to be the property of Second Party.

(x) The land in front of the "Kachchi Kursi" towards East shown by E, F, G, H, I, J, K, L and A, B, C, D on the Western-North corner, which Shri Krishna Janmsthan Sevasangh has relinquished in favour of Trust Shahi Masjid Idgah; has been shown by oblique lines in the annexed plan.

(xi) Both the parties shall file compromise in accordance with this Agreement, in all the cases pending on behalf of both the parties, after fulfillment of all the conditions of the Agreement.

(xii) That in case any party does not adhere to the conditions of this Agreement; both the parties will have a right to have it enforced through Court of law or whatever manner it may possible. The other party will have no objection to it and will not be entitled to object."

xxvii. Sewa Sansthan had no power or authority to file Suit No.43 of 1967 since it had no proprietary or ownership right in the prop-

erty of Katra Keshav Dev. The suit was not filed by or on behalf of the Janmabhoomi Trust. It was neither the plaintiff nor the defendant in the said suit. Thus, the compromise entered into between Sewa Sansthan and the Committee is illegal and *void ab initio*. The Janmabhoomi Trust was not a party to the compromise dated 12.10.1968. Thus, the terms of compromise dated 12.10.1968 are not binding upon the deity and the devotees.

xxviii. The true fact will come out before the Court after excavation that the *Karagaar* of Kans, where the birthplace of Lord Shree Krishna lies beneath the constructions raised by the Committee. The Committee and Sewa Sansthan entered into a compromise due to political reasons and created an artificial *Karagaar*.

xxix. The Committee or any other member of Muslim community, do not derive any right, title or interest and cannot continue in possession based on illegal, fraudulent and *void ab initio* compromise dated 12.10.1968.

xxx. The compromise dated 12.10.1968 entered between Sewa Sansthan and the Committee and the decree passed in Civil Suit No.43 of 1967, is null and void for the reasons below:

a. Sewa Sansthan and the Janmabhoomi Trust are separate legal entities. Sewa Sansthan had no right, interest, power whatsoever over suit property. The Janmabhoomi Trust is the owner of the entire property of Katra Keshav Dev by virtue of trust deed dated 09.03.1951.

b. The suit was not filed by the Janmabhoomi Trust.

c. Creation of the Janmabhoomi Trust by Late Jugal Kishore Birla, the entrustment of the entire property vested in the Janmabhoomi Trust, dismissal of suits filed by the Mus-

lims claiming ownership and possession by the Civil Court and the decree operating in favor of the Hindus, have been admitted in the suit.

d. Sewa Sansthan conceded the property to the Committee beyond the scope of this suit. Both the parties knew that Sewa Sansthan was not the owner of the property and could not enter into a compromise.

e. No compromise could be entered beyond the scope of the decree passed by this Court in Second Appeal No.691 of 1932. The terms of the decree dated 02.12.1935 have been violated.

f. The Janmabhoomi Trust was non-functional, and the compromise had been fraudulently entered to defeat the rights of the deity.

g. The Committee and Sewa Sansthan played fraud upon the Court.

xxxi. The construction raised by the defendants pursuant to the said compromise over the suit property is liable to be removed and possession of the same has to be handed over to the plaintiffs.

xxxii. An application was filed for leave to institute suit under Section 92 of the CPC before the learned District Judge, Mathura, *inter alia*, praying to remove defendants no. 1 to 6 from trusteeship, for direction to furnish accounts of trust properties, to set up a scheme for carrying out the object of the trust and to dissolve Sewa Sansthan. This application was rejected vide judgment and order dated 06.05.1994 passed by the then learned District Judge.

xxxiii. First Appeal No.199 of 1996 was also dismissed on 23.09.1997 by this Court, holding that the entire property of Katra

Keshav Dev vested in the Janmabhoomi Trust. Sewa Sansthan was not the trustee of the trust property. It cannot represent the Janmabhoomi Trust. Trustees were not made parties and the application under Section 92 of the CPC was, thus, not maintainable.

xxxiv. On the basis of the above observations, it was held that the Waqf Board, the Committee or any member of Muslim Community have no right and interest in the property situated in the Katra Keshav Dev.

xxxv. The chain of historical developments, execution of sale deed, trust deed, and legal proceedings since 1618 upto the decision of First Appeal No.199 of 1996 by this Court, are matter of record.

xxxvi. No part of the property situated in Katra Keshav Dev is a waqf property. Neither any Muslim nor body/trust/society/board of the Muslims ever claimed any part of it as a waqf property. It was never claimed that the property of Katra Keshav Dev has been registered and notified in the official gazette under the U.P. Waqf Act, 1936, the U.P. Waqf Act, 1960, the Wakf Act, 1923, the Central Wakf Act, 1954 or under Section 5 of the Waqf Act, 1995. Therefore, the construction in question within the property, cannot be a mosque. The members of the Committee have encroached upon the land of the deity. Therefore, they cannot claim any right over the land against the true owner. The defendants cannot have any right over the property in question based on adverse possession.

xxxvii. The provisions of the Places of Worship (Special Provision) Act, 1991[6], do not apply in this case.

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6 for short, 'Act of 1991'

xxxviii. The deity, Lord Shree Krishna Virajman, is the owner and in possession of the entire land of Katra Keshav Dev. The deity is recorded as the owner in the municipal record of Mathura Vrindavan Nagar Nigam and not Masjid Idgah. All the taxes are being paid on behalf of the deity and not by the Committee.

xxxix. A superstructure has been raised which is being called as alleged 'Shahi Masjid Idgah' in pursuance of an illegal compromise dated 12.10.1968. The deity is in symbolic possession of the land encroached by defendants no.1 and 2.

xl. Since there was no *Shebait*, *pujari* or manager to protect the interest of deity, therefore, no one took care of the land and property of the deity at Katra Keshav Dev. Sewa Sansthan captured the property of the Janmabhoomi Trust and worked against the interest of the deity. They had no power or authority to concede approximately two bighas of land of Katra Keshav Dev to the Committee. Thus, Sewa Sansthan betrayed the deity and devotees.

xli. The deity is a perpetual minor. Since 1958, the Janmabhoomi Trust, which was responsible for looking after the interest of the deity, became non-functional, therefore, cause of action is accruing every day. When the plaintiffs went to Mathura for *darshan* of Lord Shree Krishna, they were shocked to see that a mosque was standing over the birthplace of Lord Shree Krishna. The plaintiffs and other members met with the members of the Committee and asked them to remove the construction raised by them over the temple and its land. They were shown a copy of the compromise dated 12.10.1968 *qua* Suit No.43 of 1967 which was filed after the approval of the Waqf Board. They refused to remove the construction so raised.

xlii. The plaintiffs sent a notice under Section 89 of the Waqf Act, 1995[7] to the Waqf Board, which was duly served upon them, but no reply was given by the Waqf Board.

xliii. The Committee, its supporters, workers and members of the Muslim community are not allowing the members of the Hindu community to enter the premises for *darshan* and *pooja* of Lord Shree Krishna. The right of plaintiffs and other devotees is being continuously frustrated, as their right guaranteed under Article 25 of the Constitution of India, is being violated. The right to religion conferred by Article 25 of the Constitution of India is subject to morality, public order or health. Therefore, the State or any citizen cannot be permitted to promote anything immoral, affecting public order or the sentiments of the spiritual life of a citizen.

xliv. The cause of action is accruing against the wrong committed by the defendants every day. It further accrued when plaintiffs came to know about the compromise dated 12.10.1968 and the decree passed by the Civil Court. The cause of action further arose after the expiry of two months' notice when no action was taken by the Waqf board for removal of encroachment from the land in question, and it is accruing every day.

Reliefs claimed by the plaintiffs in the respective plaints:

14. The plaintiffs instituted respective suits, seeking, *inter alia,* relief of cancellation of judgment and decree, declaration, mandatory and prohibitory injunction and handing over the vacant possession of the suit property to the plaintiffs by removing the existing superstructure. The reliefs claimed by plaintiffs are enumerated hereunder: -

(a) Decree the suit in favour of plaintiffs and against the defendants canceling the judgment

7 for short, 'the Act of 1995'

and decree dated 20.07.1973 and judgment and decree dated 07.11.1974 and passed in Civil Suit No. 43 of 1967 by Civil Judge, Mathura;

(b) Declare that the judgment and decree dated 20.07.1973, judgment and decree dated 07.11.1974 passed in Civil Suit No.43 of 1967 by Civil Judge, Mathura is not binding on the plaintiffs;

(c) Decree the suit for declaration, that land measuring 13.37 acres of Katra Keshav Dev vests in the deity Lord Shree Krishna Virajman;

(d) Decree the suit for mandatory injunction in favour of the plaintiffs and against the defendants no.1 and 2 directing them to remove the construction raised by them encroaching upon the land within the area of Katra Keshav Dev City Mathura and to handover vacant possession to Shri Krishna Janmbhoomi Trust within the time provided by the Hon'ble Court;

(e) Decree the suit for prohibitory injunction restraining defendants no.1 and 2, their workers, supporters, men, attorneys and every person acting under them from entering into premises of 13.37 acres land at Katra Keshav Dev City and District Mathura;

15. In OSUT No.17 of 2023: Bhagwan Sri Krishna (Thakur Keshav Ji Mahraj) Virajman at Shree Krishna Janam Bhoomi & others vs. Anjuman Islamia Committee of Shahi Masjid, which is not consolidated with other suits, the following relief is claimed:

A. A declaration that the entire premises of Shri Krishna Janam Bhumi at Mathura, as described and delineated by red color boundaries in Schedule "A" belongs to the Plaintiff Deities be passed in favour of the Plaintiffs and against the Defendants including the entire Muslim Community of Mathura; and

B. A perpetual Injunction against the Defendants including muslim community of Mathura prohibiting them from interfering with, or raising any objection to, or placing any obstruction in the construction of the new Temple building at Shri Krishan Janmabhoomi, Mathura after demolishing and removing the existing buildings and superstructures etc. situate thereat, in so far as it may be necessary or expedient to do so for the said purpose be granted; and

C. By means of Permanent Prohibitory Injunction in favour of the Plaintiff and against defendant no. 1 to 6, their followers, men, workers, supporters and any other person acting under them including the entire Muslim Community of Mathura be restrained from entering the suit property; and

D. By means of Permanent Prohibitory injunction in favour of the Plaintiffs and against the defendant no. 1 to 6, their followers, men, workers, supporters and any other person acting under them including the entire Muslim Community of Mathura be restrained from interfering peaceful

performance of Puja and other rituals and worship of Deity by devotees of Lord Shri Krishna at the superstructure and the structure beneath thereof; and

E. Cost of the suit against such defendants who object to the grant of relief to the plaintiffs; and

F. Any other relief to which the plaintiffs may be found entitled."

16. Copy of following documents are filed by the plaintiffs in their respective plaints:-

(a) Sale deed dated 08.02.1944 executed by Rai Krishan Das and Rai Anand Krishan in favour of Pandit Mahamana Madan Mohan Malviya and others.

(b) Trust deed dated 09.03.1951 relating to the Shree Krishna Janmabhoomi Trust created by Late Shri Jugal Kishore Birla.

(c) Plaint related to Suit No. 43 of 1967 (Shree Krishna Janamb hoomi Seva Sangh, Mathura also known as Shree Krishna Janmabhoomi Trust Mathura and ors. v. Trust Masjid Idgah)

(d) Compromise deed dated 12.10.1968 in Suit No. 43 of 1967.

(e) Decree in Suit No. 43 of 1967.

(f) Khewat Chausala relating to Khewat No. 255.

(g) Electricity bill of the premise.

(h) Municipal record of the premise.

(i) Information obtained in R.T.I Act, 2005.

17. The Committee and the Waqf Board, have filed applications under Order VII Rule 11(d) read with Section 151 of the CPC, *inter alia*, praying to reject the plaints, as the suits filed by the plaintiffs are barred under provisions of the following Statutes:-

i. Sections 3, 4, 6, and 7 of the Places of Worship (Special Provisions) Act, 1991;

ii. Section 58 of the Limitation Act, 1963;

iii. Section 34 of the Specific Relief Act, 1963;

iv. Sections 6, 85, and 108-A of the Waqf Act, 1995; and

v. Order XXIII Rule 3A of the CPC.

Arguments by the defendants' Counsel:

(i) Scope under Order VII Rule 11 of the CPC:

18. Mrs. Tasneem Ahmadi, learned Counsel submitted that under Order VII Rule 11 of the CPC, the plaints are liable to be rejected because they do not disclose any cause of action and suits of the plaintiffs are barred by aforementioned statutes.

19. Learned Counsel submitted that the plaints do not disclose a reliable cause of action. An illusory cause of action is created by the plaintiffs. The plaints' averments are vague and are not supported by any cogent material. Duty is cast upon the Court to determine whether the plaint discloses a cause of action by scrutinizing the averments made in the plaint. The plaint must be read meaningfully. To decide the application for rejection of plaint, the defense taken by the defendants in their written statements is not required to be considered. Moreover, the defendants cannot be asked to file written statements.

20. It is further submitted that the remedy under Order VII Rule 11 of the CPC is an independent and a special remedy. The Court is empowered to summarily dismiss a suit at the threshold without proceeding to record evidence and conducting a trial on the basis of evidence adduced, if it is satisfied that action should be terminated on any of the grounds contained in the provisions. If any of the conditions enumerated in the provision is satisfied, it would be necessary to put an end to the sham litigation, so that further judicial time of the Court is not wasted.

21. Learned Counsel further argued that the whole purpose of conferment of such power is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the Court and exercise the mind of the respondents.

22. In support of her contentions that written statement is not required to be filed by the defendants prior to application for rejection of the plaint, Mrs. Ahmadi placed reliance upon the decision of the Hon'ble Apex Court in the case of **R K Roja vs. U S Rayudu** (2016) 14 SCC 275. The relevant paragraph is extracted here under: -

> ***"5.*** *Once an application is filed under Order 7 Rule 11 CPC, the court has to dispose of the same before proceeding with the trial.* ***There is no point or sense in proceeding with the trial of the case, in case the plaint (election petition in the present case) is only to be rejected at the threshold. Therefore, the defendant is entitled to file the application for rejection before filing his written statement.*** *In case the application is rejected, the defendant is entitled to file his written statement thereafter."*
>
> ***(Emphasis supplied)***

Learned Counsel also placed reliance upon **Dahiben v. Arvindbhai Kalyanji Bhanusali**, (2020) 7 SCC 366, wherein it was observed as under:-

> *"23.15.* ***The provision of Order 7 Rule 11 is mandatory in nature.*** *It states that the plaint "shall" be rejected if any of the grounds specified in clauses (a) to (e) are made out.* ***If the court finds that the plaint does not disclose a cause of***

action, or that the suit is barred by any law, the court has no option, but to reject the plaint."

(Emphasis supplied)

In addition to above, reliance is also placed on the following decisions:-

a) **Azhar Hussain vs. Rajiv Gandhi**, AIR 1986 SC 1253

b) **Saleem Bhai vs. State of Maharashtra**, AIR 2003 SC 759

c) **T. Arivandadam vs. T.V. Satyapal**, AIR 1977 SC 2421

d) **Umesh Chandra Saxena vs. Administrator General and others**, AIR 1999 ALL. 109

e) **Archana Kanaujia vs. Pooja Educational and Social Development Trust and others**, 2021 ILR 10 ALL. 576.

(ii) Bar under the Limitation Act, 1963:

23. It is vehemently argued on behalf of the defendants that the suits of the plaintiffs are barred by certain provisions of the Limitation Act,1963. The terms of the compromise dated 12.10.1968 were such that it led to visible physical changes on the ground which were carried out between 1968 and 1974 and could not have been hidden from the plaintiffs. The decree was drawn up in Suit No.43 of 1967. It was agreed between the parties to the suit that the northern and southern walls of '*Kachchi Kursi*' of the Idgah be extended on the east up to the railway line by the Committee. Further, it was also agreed that the plaintiffs will divert the water of the outlet of Idgah on western side towards Sewa Sansthan on the *Kachchi Kursi* by fixing pipes and thereafter, by constructing a masonry drain, flow the water towards the eastern door of the Masjid up to the edge of *Kachchi Kursi*. These changes were visible and the plaintiffs cannot claim ignorance about the compromise which they would have known of, by ex-

ercise of reasonable diligence therefore, the cause of action, if any, would have arisen at that time. However, present suits have been filed after a span of almost 50 years.

24. It is further contended that the prayer seeking declaration that decree dated 20.07.1973 and 07.11.1974, be not binding on the plaintiffs for alleged certain reasons, is also hit by the provisions of the Limitation Act, 1963. The prayer seeking a declaration that the compromise is *null* and *void,* is also barred by the Limitation Act,1963.

25. Learned Counsel for the defendants placed reliance upon the observations made by the Hon'ble Apex Court in **Dahiben case** (supra). Relevant paragraphs are extracted hereunder:

> *"**4.** The Limitation Act, 1963 prescribes a time-limit for the institution of all suits, appeals, and applications. Section 2 (j) defines the expression "period of limitation" to mean the period of limitation prescribed in the Schedule for suits, appeals or applications. Section 3 lays down that every suit instituted after the prescribed period, shall be dismissed even though limitation may not have been set up as a defense. If a suit is not covered by any specific article, then it would fall within the residuary article.*
>
> ***26.** Articles 58 and 59 of the Schedule to the 1963 Act, prescribe the period of limitation for filing a suit where a declaration is sought, or cancellation of an instrument, or rescission of a contract, which reads as under:*

Description of suit	***Period of limitation***	***Time from which period begins to run***
58. *To obtain any other declaration.*	*Three years*	*When the right to sue first accrues.*
59. *To cancel or set aside an instrument or decree or for the rescission of a contract.*	*Three years*	*When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him."*

The period of limitation prescribed under Articles 58 and 59 of the 1963 Act is three years, which commences from the date when the right to sue first accrues."

26. Reliance is also placed on the decision rendered in the case of **M Satyanayaran Murthy Died vs. K Ramalinga Swami Naidu Died**, by the Andhra Pradesh High Court in Second Appeal No.1023 of 2005. The relevant paragraphs are extracted herein below:

*"**25**. **The general principle, which also manifest itself in Section 17 of the Limitation Act, is that every person is presumed to know his own legal right and title in the property and if he does not take care of his own right and title to the property, the time for filing the suit based on such a right of title to the property is not prevented from running against him. The provisions of Section 17(1) embody fundamental principles of justice and equity viz., that a party should not be penalized for failing to adopt legal proceedings when the facts or the documents have been willfully concealed from***

him and also that a party who had acted fraudulently should not be given the benefit of limitation running in its favour by virtue of such frauds. *However, it is important to remember that Section 17 does not defer the starting point of limitation, because the defendant has committed a fraud. Section 17 does not encompass all kinds of frauds, but specific situations covered by clause (a) to (d) to Section 17 (1) of Limitation Act. Section 17 1(b) and (d) encompass only that fundamental documents or acts of concealment of documents which have the effect of suppressing knowledge entitling the party to pursue his legal remedy.* ***Once a party becomes aware of antecedents facts necessary to pursue legal proceedings, the period of limitation commences***. *Therefore, in the event that plaintiff makes out a case that falls within any one or more of four clauses to sub section 1 to section 17 of Limitation Act, the period of Limitation for filing the suit shall not began to run until the plaintiff or applicant has discovered the fraud/ mistake or could with reasonable diligence have discovered it or if the document is concealed till the plaintiff has the means of producing the concealed document or compelling its production a fortiori.*

26. Diligence is a word of common parlance means attention, carefulness and persistence in efforts of doing something. *The Hon'ble Apex Court in Chander Kanta Bansal Vs. Rajinder Singh Anand case in reference to proviso to Order 6 Rule 17 of the Code defined diligence as according to*

Oxford Dictionary, the work diligence means careful and persistent application or effort."

(Emphasis Supplied)

(iii) Bar under the Specific Relief Act, 1963:

27. Learned Counsel for the defendants submitted that the challenge to the compromise in Suit No. 43 of 1967 is hit by the provisions of Order XXIII Rule 3A of the CPC. The said challenge admits the *factum* of the possession of the Committee over Shahi Masjid Idgah. The plaintiffs did not seek the relief of possession, therefore, the suit is barred by the proviso of Section 34 of the Specific Relief Act,1963. The plaintiffs are not in possession of the suit property. The plaintiffs have filed the suit seeking reliefs for declaration and injunction only and have not sought a decree of possession. Mere declaration of title is not enough. Plaintiffs have to seek delivery of possession. Since no relief for delivery of possession is claimed, therefore, relief of injunction cannot be granted. The ancillary relief claimed by the plaintiffs does not fall under the provisions of Sections 5 and 6 of the Specific Relief Act, 1963. The plaintiffs must have sued for recovery of possession. It is also submitted that since the Committee is in possession over the suit property, therefore, further relief would be recovery of possession and suit for declaration of title is not maintainable.

28. Learned Counsel placed reliance on the decision of the Hon'ble Apex Court in **Ram Saran and others vs. Ganga Devi**, AIR 1972 SC 2685. The relied upon para is quoted as under :-

"4. … … ... The plaintiffs have not sought possession of those properties. They merely claimed a declaration that they are the owners of the suit properties. Hence the suit is not maintainable. *In these circumstances, it is not nec-*

essary to go into the other contention that the suit is barred by limitation."

(Emphasis Supplied)

Reliance is also placed on **Vasantha (Dead) through LRs vs. Rajlakshmi @ Rajam (Dead) through LRs,** 2024 SCC Online SC 132. The attention of the Court is drawn to the following paragraphs:

*"**51. … … ... in Vinay Krishna v. Keshav Chandra (2-Judge Bench), this Court while considering Section 42 of the erstwhile Specific Relief Act, 1877 to be pari materia with Section 34 of SRA, 1963 observed that the plaintiff's not being in possession of the property in that case ought to have amended the plaint for the relief of recovery of possession in view of the bar included by the proviso.***

***52.** This position has been followed by this Court in Union of India v. Ibrahim Uddin (2-Judge Bench), elaborated the position of a suit filed without the consequential relief. It was observed:*

*"**55.** The section provides that courts have discretion as to declaration of status or right, however, it carves out an exception that a court shall not make any such declaration of status or right where the complainant, being able to seek further relief than a mere declaration of title, omits to do so.*

56. In Ram Saran v. Ganga Devi [(1973) 2 SCC 60] this Court had categorically held that the suit seeking for declaration of title of ownership but

where possession is not sought, is hit by the proviso of Section of the Specific Relief Act, 1963 and, thus, not maintainable. *In Vinay Krishna v. Keshav Chandra [1993 Supp (3) SCC 129] this Court dealt with a similar issue where the plaintiff was not in exclusive possession of property and had filed a suit seeking declaration of title of ownership. Similar view has been reiterated observing that the suit was not maintainable, if barred by the proviso to Section 34 of the Specific Relief Act. (See also Gian Kaur v. Raghubir Singh [(2011) 4 SCC 567)*

57. *In view of the above, the law becomes crystal clear that it is not permissible to claim the relief of declaration without seeking consequential relief."*

(Emphasis Supplied)

(iv) Bar under the Waqf Act, 1995:

29. It is argued that the suit property, which is a waqf property, is a matter of public record. The jurisdiction of the Civil Court is barred under certain provisions of the Act of 1995. According to Section 6, the suit may be instituted before the Waqf Tribunal. Given the provisions contained in Section 85, the jurisdiction of Civil Court, Revenue Court and any other authority in respect of any dispute, question or other matter relating to any waqf, waqf property or other matter is barred. Such dispute shall be determined by the Waqf Tribunal. It is further submitted that Section 108-A of the Act of 1995 overrides any other law for the time being in force.

30. The learned Counsel placed heavy reliance upon the judgment of the Hon'ble Apex Court rendered in **Rashid Wali Beg vs. Farid Pindari (**2022) 4 SCC 414, and submitted that the jurisdiction to decide every dispute in relation to a waqf property lies only with the Waqf Tribunal and not with the Civil Court. Relevant paragraphs are extracted as under:-

> *"**42.** A conjoint reading of Sections 6, 7 and 85 would show that the bar of jurisdiction of Civil Court contained in Section 6(5) and Section 7(2) is confined to Chapter II, but the bar of jurisdiction under Section 85 is all pervasive. This can be seen from the following distinguishing features:*
>
> ***42.1.** Section 6(5) bars the institution or commencement of a suit or other legal proceeding in a court "in relation to any question referred to in sub-section (1)". Sub-section (1) of Section 6 speaks only about two questions, namely, whether a particular property specified as a waqf property in the list of waqfs is a waqf property or not and whether a waqf is Shia waqf or Sunni waqf.*
>
> ***42.2.** Section 7(2) bars any court, tribunal or other authority from staying any proceeding before the Waqf Tribunal, in respect of a waqf, on the only ground of pendency of any suit, application or appeal or other proceeding. Section 7(2) specifically relates to the proceedings under Section 7 and not to any other proceeding. This is clear by the use of the words, "no proceeding under this Section". Section 7(1) again deals only with two questions, namely, whether a particular property specified as waqf property in the list of waqfs is a waqf prop-*

erty or not and whether a waqf specified in the list is a Shia waqf or Sunni waqf. Therefore, the bar under Section 7(2) is also confined only to these two questions, on account of the use of the words, "no proceeding under this Section".

42.3. *While Sections 6(1) and 7(1) speak only about two questions which are germane to the matters covered by Chapter II of the Act alone, Section 85 speaks: (i) about any dispute, question or other matter relating to any waqf or waqf property and (ii) about "other matter which is required by or under this Act to be determined by a Tribunal".*

42.4. *A major distinguishing feature between Sections 6(1) and 7(1) on the one hand and Section 83 on the other hand is that the dispute, question or other matter referred to in Sections 6 and 7 are confined only to what is included in the list of waqfs prepared under Section 4 and published under Section 5. The words "specified ... in the list of waqfs" found in Sections 6(1) and 7(1), are conspicuous by their absence in Section 83(1). Therefore, it is clear that Sections 6 and 7 speak only about two categories of cases, but Section 83 covers the entire gamut of possible disputes in relation to any waqf or waqf property."*

... ...

45. *Interestingly, the basis of the decision in Ramesh Gobindram [Ramesh Gobindram v. Sugra Humayun Mirza Wakf, (2010) 8 SCC 726 : (2010)*

3 SCC (Civ) 553] was removed through an amendment under Act 27 of 2013. As we have stated elsewhere, Ramesh Gobindram [Ramesh Gobindram v. Sugra Humayun Mirza Wakf,] sought to address the question whether a Waqf Tribunal was competent to entertain and adjudicate upon disputes regarding eviction of persons in occupation of what are admittedly waqf properties. Since this Court answered the question in the negative, Section 83(1) was amended by Act 27 of 2013 to include the words, "eviction of tenant or determination of rights and obligations of the lessor and lessee of such property".

... ...

47. The upshot of the above discussion is that the basis of Ramesh Gobindram [Ramesh Gobindram v. Sugra Humayun Mirza Wakf] now stands removed through Amendment Act 27 of 2013. *In fact, when Ramesh Gobindram [Ramesh Gobindram v. Sugra Humayun Mirza Wakf] was decided, Sections 6(1) and 7(1) enabled only three categories of persons to approach the Waqf Tribunal for relief. They are, (i) the Board; (ii) the mutawalli of the waqf; or (iii) any person interested therein. However, the Explanation under Section 6(1) clarified that the expression "any person interested therein" shall include every person, who, though not interested in the waqf, is interested in the property. But by Act 27 of 2013 the words, "any person interested" were substituted by the*

words, "any person aggrieved", meaning thereby that even a non-Muslim is entitled to invoke the jurisdiction of the Tribunal. Due to the substitution of the words "any person aggrieved", Act 27 of 2013 has deleted the Explanation under 6(1). This amendment has also addressed the concern expressed in Ramesh Gobindram [Ramesh Gobindram v. Sugra Humayun Mirza Wakf, (2010) 8 SCC 726 : (2010) 3 SCC (Civ) 553] (in para 21 of the SCC report) whether a non-Muslim could be put to jeopardy by the bar of jurisdiction, merely because the property is included in the list of waqfs. We must point out at this stage that the Explanation under sub-section (1) of Section 6, as it stood at the time when Ramesh Gobindram [Ramesh Gobindram v. Sugra Humayun Mirza Wakf] was decided, already took care of this contingency, but was omitted to be brought to the notice of this Court."

(Emphasis Supplied)

Reliance is also placed on the judgment of **Board of Waqf West Bengal vs. Anis Fatima Begum**, (2010) 14 SCC 588. The relied upon paragraphs are reproduced hereunder:-

*"**7.** The dispute in the present case relates to a wakf. In our opinion, **all matters pertaining to wakfs should be filed in the first instance before the Wakf Tribunal constituted under Section 83 of the Wakf Act, 1995 and should not be entertained by the civil court or by the High Court straightaway under Article 226 of the Constitution***

of India. It may be mentioned that the Wakf Act, 1995 is a recent parliamentary statute which has constituted a Special Tribunal for deciding disputes relating to wakfs. *The obvious purpose of constituting such a Tribunal was that a lot of cases relating to wakfs were being filed in the courts in India and they were occupying a lot of time of all the courts in the country which resulted in increase in pendency of cases in the courts. Hence, a Special Tribunal has been constituted for deciding such matters.*

... ...

10. Thus, the Wakf Tribunal can decide all disputes, questions or other matters relating to a wakf or wakf property. The words "any dispute, question or other matters relating to a wakf or wakf property" are, in our opinion, words of very wide connotation. Any dispute, question or other matters whatsoever and in whatever manner which arises relating to a wakf or wakf property can be decided by the Wakf Tribunal.

... ...

11. Under Section 83(5) of the Wakf Act, 1995 the Tribunal has all powers of the civil court under the Code of Civil Procedure, and hence it has also powers under Order 39 Rules 1, 2 and 2-A of the Code of Civil Procedure, 1908 to grant temporary injunctions and enforce such injunctions. Hence, a full-fledged remedy is available to any party if

there is any dispute, question or other matter relating to a wakf or wakf property."

(Emphasis Supplied)

(v) Bar under the Places of Worship (Special Provisions) Act, 1991:

31. Mrs. Tasneem Ahmadi, learned Counsel, submitted that the relief claimed in the present suit, *inter alia*, seeks removal of the Shahi Idgah Mosque and handing over of vacant possession of the same to the Janmabhoomi Trust thereby, converting a religious place for offering prayers by the Muslim community to one for offering prayers to Lord Shree Krishna. The same is barred by the spirit of the legislation expressed through the preamble as well the provisions contained in Sections 3, 4, 6 and 7 of the Act of 1991 which bars the conversion of places of worship as they existed on 15th August, 1947.

32. It is submitted that it is an admission on the part of the plaintiffs, as averred in their plaints, that Shahi Idgah Mosque was constructed by Aurangzeb, therefore, the 'religious character' of the place of worship as mosque is evident. On the basis of the terms of the compromise, the suit property was a mosque even on the date of the compromise, therefore, the provisions of the Act of 1991 are squarely applicable.

33. Learned Counsel referred to certain paragraphs of the plaints of the respective original suits and submitted that the existence of the mosque is admitted from 1669-70. The mosque has been in existence ever since. It is also an admitted fact that the property was used as a mosque. In Notification No.1465/1133M dated 25.11.1920, issued by Lt. Governor, United Province and Notification No. UP1669-M1133 dated 27.12.1920, existence of the mosque is recognized. It is also admitted that the Committee was in possession of the suit property. The place on which the mosque was in existence, was continuously utilized and is still being utilized as a mosque.

34. Learned Counsel for the defendants further submitted that since the Ancient Monument Preservation Act, 1904[8] was repealed by Section 39 of the Ancient Monuments and Archaeological Sites and Remains Act, 1958[9], therefore, declaring the suit property as a protected monument is insignificant.

35. Sri Afzal Ahmad, learned Counsel appearing on behalf of the Waqf Board submitted that the object to legislate the Act of 1991 was that the legislation did not want to open a Pandora's box. It was the intention of the legislation that communal peace and harmony should be maintained between the communities in the country. Every inch of this country is a pious land, and every dispute would amount to the opening up of Pandora's box.

(vi) Bar under Order XXIII Rule 3A of the CPC:

36. Mrs. Ahmadi submitted that Order XXIII Rule 3A of the CPC expressly imposes a bar that no suit shall lie to set aside a decree on the ground that the compromise on which, the decree is based, was not lawful. The compromise was entered on 12.10.1968 in Suit No. 43 of 1967. The suit was decided vide judgment and decree, dated 20.07.1973 and judgment and decree, dated 07.11.1974. In the compromise deed, the title and the possession of Shahi Masjid Idgah were decided on the basis of the compromise arrived between the parties to the suit.

37. Mr. Afzal Ahmad, learned Counsel submitted that the plaint is cleverly drafted by the plaintiffs. The defendants, Shree Krishna Janmabhoomi Trust, Mathura and Shree Krishna Janamsthan Sewa Sansthan, are in collusion with the plaintiffs. So far as the sanctity of the compromise dated 12.10.1968 is concerned, respected personalities have joined as plaintiffs to Suit No. 43 of 1967. They put their signatures on the compro-

8 for short referred to as 'the Act of 1904'
9 for short referred to as 'the Act of 1958'

mise deed. Therefore, it cannot be assumed that the compromise is based on fraud and misrepresentation.

38. He further submitted that an Idgah is not a Masjid. There are different kinds of mosques in which, prayer is offered by Muslims. The suit property is a waqf property which is duly registered by *Mutwalli*. It was created by an unregistered deed 400 years ago. At that time, the Act of 1995 was not enacted. Therefore, the property was not registered as a waqf. The Government Gazette of United Province dated 26.02.1944 lists the suit property at Sl. No. 43 as 'Idgah Masjid Aalmgiri'. Names of *mutwalli* were entered as Abdulla Khan, Fathe Nusrat, Salimulla etc.

ARGUMENTS BY THE PLAINTIFFS:

(i) Scope under Order VII Rule 11 of the CPC:

39. Learned Counsel for the plaintiffs Sri Vishnu Shankar Jain submitted that it is well established that the plaint can be rejected at the threshold under Order VII Rule 11 of the CPC, only when it appears to the Court that the averments made in the plaint are barred by any law or do not disclose any cause of action. He further submitted that the case of the plaintiffs is not barred under any law as alleged by the learned Counsel for the defendants.

40. He submitted that the plaintiff '*Bhagwan Shree Krishna Virajman'* is a perpetual minor. Plaintiff no.2 is '*Asthan*', Shree Krishna Janmabhoomi, which itself is a deity, being the birthplace of Lord Shree Krishna. It can exercise every right available to a juridical person. It has every right to protect and to recover its lost property through *Shebait*. If the *Shebait* is negligent, it can file a suit in the Court of law through the next friend. The present suit is filed by the deity and *Asthan* to recover their lost property.

41. It is submitted that the place of birth of Lord Shree Krishna lies beneath the present structure raised by the Committee. Lord Shree Krishna

was born in the *Karaagar* of Kans. The entire area is known as Katra Keshav Dev. Under the Hindu law, property once registered in the deity, shall continue to be vested in deity.

42. He took the Court through the chronological events leading up to the institution of the present suit, which are as summarized in para 13 of this order.

43. Further, it is contended:-

43.1 That Sewa Sansthan had no authority to file Suit No.43 of 1967. Sewa Sansthan had no right, authority or propriety to enter into compromise with the Committee and to concede two bigha land of the property of the Janmabhoomi Trust to the defendants. The property vested in the Janmabhoomi Trust was never transferred, dedicated, vested or entrusted to Sewa Sansthan. Suit No.43 of 1967 was filed by Sewa Sansthan, misrepresenting itself to be competent to file the suit, concealing the facts and committing fraud with the Court. The compromise dated 12.10.1968 is, therefore, fraudulent, illegal and *void ab initio.* Plaintiffs/idol/deity were neither party to Suit No.43 of 1967, nor to the compromise dated 12.10.1968, therefore, it is not binding upon the plaintiffs/idol/deity. Pursuant to the said compromise, a superstructure was raised, and certain physical changes were carried out by the defendants over the property.

43.2 That the birthplace of Lord Shree Krishna lies beneath the illegal superstructure which is a sacred place for Hindu devotees. The Hindu devotees are offering prayer, *aarti* and other ritual ceremonies on regular basis since time immemorial. Before partial demolition of the temple in 1669-70 by the Mughal Ruler Aurangzeb, a temple of Lord Shree Krishna was existing over the suit property since time immemorial. Before 1669-70, no mosque was existing.

43.3 That in the garb of the alleged compromise, the defendants have illegally encroached upon the land of the temple of Lord Shree Krishna. The plaintiffs have every right to offer worship and carry out religious activities in the temple of Lord Shree Krishna. In several rounds of litigation, it was categorically held that the suit property lies in Katra Keshav Dev measuring 13.37 acre and there was a temple of Lord Shree Krishna since time immemorial.

43.4 That when the plaintiffs visited Mathura for *darshan* of Lord Shree Krishna on the given dates in their respective plaints, they became aware about the existence of the so called super structure known as Shahi Masjid Idgah on the sacred birthplace of Lord Shree Krishna, for the first time. Upon further enquiry, they came to know about the compromise, dated 12.10.1968 entered between the parties to Suit No. 43 of 1967 pursuant to which the superstructure was raised by the defendants.

44. He further submitted that there are historical events which took place between 1618 and 1951. The Court can take judicial notice of some references made in the historical books which corroborate the averments made in the plaint by the plaintiffs. All these facts and circumstances indicate that a valid cause of action arose before the plaintiffs to file present suits.

45. To buttress his arguments, learned Counsel for the plaintiffs placed reliance upon various decisions of the Hon'ble Apex Court, enumerated as under:-

a) **Saleem Bhai vs State of Maharastra**; 2003(1) SCC 557

b) **P.V. Gururaj Reddy vs P. Neeradha Reddy and Others**; 2015(8) SCC 331

c) **Kuldeep Singh Pathania vs Bikram Singh Jaryal;** 2017 (5) SCC 347

d) **Shaukathussain Mohammed Patel vs Khatunben Mohammedbhai Polara;** 2019(10) SCC 226

e) **Mayar (H.K.) Ltd. & Ors. Vs Owners & Parties, vs Parties, Vessel M.V. Fortune Express & Ors.** 2006(3) SCC 100

f) **Kamla and Others vs K.T. Eshwara Sa and Others** 2008 (12) SCC 661

g) **Srihari Hanumdas Totala vs Hemant Vithal Kamath** 2021 (9) SCC 99

46. Learned Counsel for the plaintiffs relied upon the observations made by the Hon'ble Apex Court in **Saleem Bhai** (supra), which are extracted as under:-

> ***"9.*** *A perusal of Order 7 Rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application there under are the averments in the plaint. The trial court can exercise the power under Order 7 Rule 11 CPC at any stage of the suit — before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order 7 Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court. The order, therefore, suffers from non-exercising of the jurisdiction vested in the Court as well as procedural irregular-*

ity. The High Court, however, did not advert to these aspects."

47. Reliance has also been placed upon the decision of the Supreme Court rendered in the case of **P.V. Gururaj Reddy** (supra). Relevant paragraph is extracted here in below:

> *"5. Rejection of the plaint under Order 7 Rule 11 of CPC is a drastic power conferred in the court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order 7 Rule 11, therefore, are stringent and have been consistently held to be so by the Court.* ***It is the averments in the plaint that have to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order 7 Rule 11, the stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial. It is only if the averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial."***
>
> ***(Emphasis supplied)***

48. Sri Anil K Airi, learned Senior Counsel, assisted by Shri Hare Ram Tripathi, submitted that to decide the application for rejection of plaint under Order VII Rule 11 of the CPC, no amount of evidence is to be taken into consideration. The written statement of the defendants should not be

considered. Whenever an application for rejection of plaint is allowed, the plaintiff becomes remedy less.

49. It is further contended that in the present suits, the title is not under challenge. The area of 13.37 acres is also not under challenge. It is not disputed that the entire property was vested in the Janmabhoomi Trust by Late Jugal Kishore Birla. The title of the plaintiffs over the suit property is established. Since the title is not disputed by the defendants, it has attained finality in favour of the plaintiffs.

50. It was also argued that the facts and circumstances averred in the plaint relate to certain historical developments, execution of documents as well as the cause of action that arose to the plaintiffs. All these essential questions are to be decided during the trial on the basis of the evidence led by the parties. The Court has to take judicial notice of certain facts. Therefore, at this stage, when an application for rejection of plaint is being heard, the above essential ingredients cannot be decided.

51. Sri Rahul Sahai, learned Senior Counsel submitted that while exercising the power under Order VII Rule 11 of the CPC, the Court has to act with utmost caution. Rejection of plaint, at the threshold, entails very serious consequences for the plaintiffs, therefore, this power has to be exercised in exceptional circumstances. The Court has to be absolutely sure that on a meaningful reading of the plaint, it does not make out any case. The exercise of this power would not be justified merely because the averments made in the pleadings are highly improbable or which may be difficult to believe.

52. He further submitted that the trial is a rule and the benefit, if any, will go in favour of the plaintiffs. The plaint discloses a valid cause of action on the basis of the facts averred in the plaint. The facts which constitute the cause of action are always subject to evidence to be led by the parties during the trial. Merely on the basis of oral arguments, it cannot be

assumed that the cause of action is illusory and the plaint is cleverly drafted.

53. Sri Sahai, placed reliance upon the judgment rendered in **M/s Crescent Petroleum Limited vs. M V Monchegorsk and another,** AIR (2000) BOM 161. The relevant paragraph is reproduced here under-

> *"5.....*
>
> *19 ".....It is settled law that the plaint can be rejected as disclosing no cause of action if the Court finds that it is plain and obvious that the case put forward is unarguable. In my view the phrase "does not disclose a cause of action" has to be very narrowly construed.* ***Rejection of the plaint at the threshold entails very serious consequences for the plaintiff. This power has, therefore, to be used in exceptional circumstances. The Court has to be absolutely sure that on a meaningful reading of the plaint it does not make out any case.*** *The plaint can only be rejected where it does not disclose a cause of action or where the suit appears from the statements made in the plaint to be barred by any provision of the law.* ***While exercising the power of rejecting the plaint, the Court has to act without most caution. This power ought to be used only when the Court is absolutely sure that the plaintiff does not have an arguable case at all. The exercise of this power though arising in civil procedure, can be said to belong to the realm of criminal jurisprudence and any benefit of the doubt must go to the plaintiff, whose plaint is to be branded as an abuse of the process of the***

***Court, This jurisdiction ought to be very sparingly exercised and only in very exceptional cases. The exercise of this power would not be Justified merely because the story told in the pleadings was highly improbable or which may be difficult to believe.*"**

(Emphasis Supplied)

54. Sri Saurabh Tiwari, learned Counsel submitted that the disputed question cannot be decided at the time of consideration of an application under Order VII Rule 11 of the CPC. No amount of evidence or merit of the controversy can be considered at this stage.

55. Sri Satyaveer Singh, learned Counsel, submitted that the provision under Order VII Rule 11 of the CPC are to be read with the provision of Order XIV Rule 2 of the CPC. The factual and legal aspects of the matter can only be decided by framing issues based on the evidence to be led by the parties during the trial. Further, the registered sale deed, dated 8.2.1944, executed by the descendant of Raja Patnimal in favour of Mahamana Pandit Madan Mohan Malviya and others, and the trust deed dated 09.03.1951 are still in existence. These documents are neither challenged before nor declared *null* and *void* by any competent Court of law. These documents are 30 years old. Therefore, the genuineness of the document is to be presumed under Section 90 of the Indian Evidence Act, 1872. This presumption is unrebutted, since no contrary documentary evidence has been adduced by the defendants. He referred to the trust deed as 'a *document of resolution (Sankalp)'.* **The resolution can never be changed. The resolution always stays alive (संकल्प हमेशा जिंदा रहता है, और यह कभी मरता नहीं है).**

56. Learned Senior Counsel, Sri C. S. Vaidyanathan, assisted by Sri Ajay Kumar Singh, submitted that while deciding the application under

Order VII Rule 11 of the CPC, only the averments of the plaint are material and can be taken into consideration. The plaint has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. The pleadings in the plaint have to be taken as correct at their face value in its entirety. It is a trite law that the plaint has to be read as a whole, particular plea cannot be considered in silos.

57. He placed reliance on the decisions rendered by the Hon'ble Apex Court in **Popat and Kotecha Property vs. State Bank of India Staff Association,** (2005) 7 SCC 510 and **C Natarajan vs. Aashim Bhai,** (2007) 14 SCC 183**.**

58. He further submitted that at the stage of deciding an application under Order VII Rule 11 of the CPC, the averments made in the written statement, or the case of the defendants do not have to be considered at all.

59. Sri Vinay Sharma, learned Counsel as well as Sri Ashutosh Pandey (one of the plaintiffs in person) submitted that so far as the applicability of the judgment of ***Asma Latif & Anr. Vs Shabbir Ahmad & ors,*** *Civil Appeal No. 9695 of 2013* is concerned, it does not support the argument of the defendants. Relevant paragraph is extracted as under:-

> *"39. Although not directly arising in the present case, we also wish to observe that the question of jurisdiction would assume importance even at the stage a court considers the question of grant of interim relief. Where interim relief is claimed in a suit before a civil court and the party to be affected by grant of such relief, or any other party to the suit, raises a point of maintainability thereof or that it is barred by law and also contends on that basis that interim relief should not to be granted,*

grant of relief in whatever form, if at all, ought to be preceded by formation and recording of at least a prima facie satisfaction that the suit is maintainable or that it is not barred by law. Such a satisfaction resting on appreciation of the averments in the plaint, the application for interim relief and the written objection thereto, as well as the relevant law that is cited in support of the objection, would be a part of the court's reasoning of a prima facie case having been set up for interim relief, that the balance of convenience is in favour of the grant and non-grant would cause irreparable harm and prejudice. It would be inappropriate for a court to abstain from recording its prima facie satisfaction on the question of maintainability, yet, proceed to grant protection pro tem on the assumption that ***the question of maintainability has to be decided as a preliminary issue under Rule 2 of Order XIV, CPC. That could amount to an improper exercise of power. If the court is of the opinion at the stage of hearing the application for interim relief that the suit is barred by law or is otherwise not maintainable, it cannot dismiss it without framing a preliminary issue after the written statement is filed but can most certainly assign such opinion for refusing interim relief. However, if an extraordinary situation arises where it could take time to decide the point of maintainability of the suit and non-grant of protection pro tem pending such decision could lead to irreversible consequences****, the court may proceed to make an appropriate or-*

der in the manner indicated above justifying the course of action it adopts. In other words, such an order may be passed, if at all required, to avoid irreparable harm or injury or undue hardship to the party claiming the relief and/or to ensure that the proceedings are not rendered infructuous by reason of non-interference by the court."

(Emphasis supplied)

(ii) Bar under the Places of Worship (Special Provisions) Act, 1991:

60. Sri C S Vaidyanathan, learned Senior Counsel, assisted by Sri Ajay Kumar Singh, contended that the provisions of the Act of 1991 are not applicable since the temple of Lord Shree Krishna was existing over the suit property for the last 5000 years. The property had always been treated as the temple of Lord Shree Krishna. Regular *puja, aarti* and other religious rituals were performed by the Hindu devotees. Merely demolition by intruders and converting the property into an alleged Mosque or Idgah does not adversely affect the religious character of the place of worship as a temple. Learned Senior Counsel impressed that '**once a temple, always a temple**' is a judicially recognized principle of law and therefore, the religious character of the deity cannot be lost even by destruction. He placed reliance on the following observation made by the Hon'ble Apex Court in the case of **M. Siddiq v. Suresh Das** (2020) 1 SCC 1 (Ayodhya Case). The extract of the relevant paragraphs are reproduced here under :-

"148. The idol constitutes the embodiment or expression of the pious purpose upon which legal personality is conferred. ***The destruction of the idol does not result in the termination of the pious purpose and consequently the endowment. Even where the idol is destroyed, or the presence of the***

idol itself is intermittent or entirely absent, the legal personality created by the endowment continues to subsist.

… … …

"154….The idol, as a representation or a "compendious expression" of the pious purpose (now the artificial legal person) is a site of legal relations. ***This is also in consonance with the understanding that even where an idol is destroyed, the endowment does not come to an end. Being the physical manifestation of the pious purpose, even where the idol is submerged, not in existence temporarily, or destroyed by forces of nature, the pious purpose recognised to be a legal person continues to exist."***

(Emphasis Supplied)

61. Learned Senior Counsel further argued that Section 2 (b) and (c) of the Act of 1991 define 'conversion' and 'place of worship' respectively. The 'religious character' is not defined in the Act of 1991. It is the Court who has to find out from the facts and circumstances of each case as to the religious character of the place of worship. The religious character has never changed, and the property of Katra Keshav Dev is the birth place of Lord Shree Krishna 'Keshav Dev'. Raising of alleged Mosque does not change the religious character of the temple.

62. Learned Counsel Shri Vishnu Shankar Jain, submitted that foreign invaders, Sikandar Lodhi and Mahmood Gaznavi, during their reign, demolished the temple of Lord Shree Krishna. The Mughal ruler Aurangzeb, in 1669, constructed a superstructure that was named as Mosque after the partial demolition of the temple of Lord Shree Krishna. Several Hindu

signs, like, '***Sheshnag'***, '**sacred lotus flower**' etc., exist in the suit property. Hindu rulers always worshipped and paid homage to the birthplace of Lord Shree Krishna, which lies beneath the present structure. Every inch of Katra Keshav Dev is devoted to Lord Shree Krishna and to the Hindu community. The property is being continuously used for prayer, offering *puja, aarti* and performing other religious activities. The religious character of a temple is not destroyed by performing any other mode of worship.

63. He explained that the provisions of the Act of 1991 will apply to the religious buildings such as temple, mosque, church or gurudwara. To attract the provisions of the Act of 1991, the 'religious character' of the place of worship has to be determined. The Act of 1991 does not bar the determination of question of fact as to the religious character of a particular place of worship. The plaintiffs have every right to establish the religious character of the subject building which is a question of fact. The religious character of the suit property shall be determined on the basis of the oral, documentary, scientific and expert evidence to be led by the plaintiffs during the trial. The plaintiffs would prove that the suit property is a Hindu temple and the entire property of Katra Keshav Dev is vested in the deity.

64. It is also submitted that on the contrary, Muslims are required to prove the existence of the mosque over the suit property to determine the religious character as a Mosque, and that a valid waqf was created by a Wakif being the owner of the property. It is also to be proved that the property was dedicated to a waqf and a valid waqf deed was executed relating to the suit property.

65. It is vehemently argued by Shri Jain that the principles of 'first in existence' or 'prior in existence' is of paramount consideration for determining the right to worship at a particular place where two communities claim the right to worship. He further contended that Section 4 of the Act

of 1991 declares that the religious character of a place of worship as existing on 15th Day of August 1947 shall continue to be the same as it existed on that day. The religious character of a place of worship is the determinative factor for deciding the applicability of Section 4 of the Act of 1991. The religious character of the place in question is Hindu. There are various Hindu deities like *'**Sheshnag**'*, '**sacred lotus flower**' etc., on the property in dispute. The entire property of Katra Keshav Dev measuring 13.37 acres vests in the deity '***Bhagwan Shree Krishna Virajman***'.

66. Shri Satyaveer Singh, learned Counsel submitted that the illegal construction of superstructure in the place of temple and the construction carried out pursuant to illegal and fraudulent compromise dated 12.10.1968 cannot be termed as admission on the part of the plaintiffs. There is a factual dispute about the demolition of temple of Lord Shree Krishna from time to time and raising of the superstructure by the defendants which exists even today. The fact that the compromise dated 12.10.1968 is illegal, without authority and *void ab initio* has to be decided on the basis of the evidence to be led by the parties during the trial.

67. He further submitted that the character of the suit property has always remained as birthplace of Lord Shree Krishna and did not change despite construction of illegal superstructure on it. The entire suit property is in symbolic possession of the plaintiffs. The devotees are worshipping, performing *pooja* and *arti,* treating the superstructure as '*Garbh Grah*', the birthplace of Lord Shree Krishna. *Aarti* is being performed five times a day. Devotees are performing '*parikrama*' around composite and compounded property, therefore, the religious character of the suit property is a temple. In view of the rival claim of the parties about the nature and usage of the property, religious character needs to be determined by evidence to be led by parties during the trial. It cannot be decided at this stage and the plaint cannot be rejected.

68. Reliance is placed on the judgments of **U.P. Sunni Waqf Board vs Ancient Idol of Swayambhoo Lord Vishveshwar & Ors.**, 2023 AHC 239874 and **Anjuman Intezamia Masjid vs Rakhi Singh,** 2023 SCC Online All 208.

69. Sri Ashutosh Pandey, one of the plaintiffs appearing in person, submitted that near the eastern side of the superstructure, an old well which is called *'Krishna Koop'* is existing since time immemorial. The Hindu devotees visit this place to perform '*Mundan* Ceremony' of their children. It is believed that their children will be blessed with the divine of Lord Shree Krishna. '*Pooja'* and '*Aarti'* are also being performed regularly at this place. Every year, after the Holi festival, the Hindu devotees perform '*Basoda Puja'* at the '*Krishna Koop'*. On the festival of '*Janamashtami*', millions of Hindu devotees assemble at the site to offer worship. They perform '*puja* 'and '*aarti'* at a large scale, facing the alleged illegal super structure believing it as '*Garbh Graha'* of Lord Shree Krishna.

70. Sri Hari Shankar Jain, learned Counsel assisted by Shri Prabhash Pandey, vehemently argued that Section 4(3)(a) of the Act of 1991 provides that the provisions of Sub sections (1) and (2) will not apply to any place of worship which is an ancient and historical monument or an archaeological site, or remains covered by the Act of 1958 or any other law for the time being in force. Section 3 of the Act of 1904, provides that the Central Government by notification in the official gazette would declare an ancient monument to be a protected monument. The Lieutenant Governor, United Province, Agra and Oudh, vide its Notification Number 1465/1133-M, dated 25th November, 1920 declared the place of the temple at Katra Keshav Dev, an ancient monument as a protected monument. The notification reads thus:

> "*In exercise of the powers conferred by Section 3, sub-section (1) of the Ancient Monuments Preservation Act (VII of 1904), his Honour the Lieu-*

tenant-Governor of the United Province of Agra and Oudh is hereby pleased to declare the Under mentioned ancient Monument to be protected monuments within the meaning of the Act and to direct that no one shall destroy, remove, alter or efface in any manner or build on or near the site of monuments without having first obtained permission from the Government or its authorized officers.

2. Any objection to the above proposal received in writing by the Local Government within one month from the date of this notification will be taken into consideration.

Sl. No.	*Name and description of monument*	*District*	*Locality*
37	*The portion of Katra mound which are not in the position of nazul tenants on which formerly stood a temple of Keshav Deva which was dismantled and the site was utilized for the mosque of Aurangzeb.*	*Muttra*	*Kosi on Muttra and Bharatpur road, 9 miles from Muttra.*

71. He further submitted that the State of U.P. enacted 'The U.P. Ancient and Historical Monuments, and Archaeological Sites and Remains Act, 1956'[10]. The State of Uttar Pradesh, exercising its power under Section 3 of State Act, adopted the Act of 1904. Section 3 of the State Act of 1956 provides thus:

10 for short, 'State Act of 1956'

> *"3. The provisions of the ancient Monuments Preservation Act,1904, as set out in Schedule I with the modifications mentioned in Schedule II, are hereby re-enacted and shall apply and be always deemed to have applied to ancient and historical monuments and archaeological sites and remains in Uttar Pradesh."*

72. On the basis of the above, he contended that the provisions of the Act of 1904 were made applicable in the State of Uttar Pradesh. Therefore, by this enactment, the Act of 1904 was adopted, reinforced, borrowed and implemented. Since a notification was issued in the year 1920, and the property was declared as a protected monument, therefore, the alleged notification issued in 1944 has no force.

73. The Public Works Department, State of U.P. issued Notification No. 1669/1133M dated 27.12.1920, wherein at Sr. No. 37, temple at Katra Keshav Dev, which is the subject property in this case, is mentioned, therefore, the temple situated at Katra Keshav Dev was confirmed to be a 'protected monument of national importance'.

74. He then contended that the notification issued on 25.11.1920 by the Lt. Governor, United Province is enforceable and applicable in the present case. The temple situated at Katra Keshav Dev was declared as national monument as well as a protected monument by the United Province and thereafter, by the State Government. Given the above, the subject building is covered by notification dated 25.11.1920, therefore, the provisions of Act of 1991 would not be applicable.

75. During the argument, Shri Jain filed 'List of Monuments of National Importance in Uttar Pradesh'. In this list, at Serial No. 219, the similar entry finds place which is quoted in the notification dated 25.11.1920. The same is reproduced below:

Sl. No.	***Name of Monument/Site***	***Locality***	***District***
219	*Portions of Katra Mound which are not in the possession of Nazul tenants on which formerly stood a temple of Keshavadeva which was dismantled and the site utilized for the mosque of Aurangzeb.*	*Mathura*	*Mathura*

76. It is emphasised that the matters relating to ancient historical monuments and archaeological sites have been distributed among three lists under the Seventh Schedule of the Constitution of India. List I-Union List of Seventh Schedule, at Entry No.67, mentions *ancient and historical monuments and records, and archaeological sites and remains, to be of national importance*. List II-State List, Entry No.12 mentions *libraries, museums and other similar institutions controlled or financed by the State; ancient and historical monuments and records other than those declared by or under law made by Parliament to be of national importance*. Similarly, Entry no.40 of List-III, Concurrent List mentions *archaeological sites and remains other than those declared by or under law made by Parliament to be of national importance.*

77. Refuting the arguments advanced by learned Counsel for defendants that the Act of 1904 was repealed by Section 39 of the Act of 1958, Shri Jain vehemently argued that the Act of 1904 was never repealed. He referred to Section 39(2) of the Act of 1958, which reads thus:-

> *"The Ancient Monuments Preservation Act, 1904, shall cease to have effect in relation to ancient and historical monuments and archaeological sites and remains declared by or under this Act to be of national importance, except as respect to things done*

or omitted to be done before the commencement of this Act".

78. Shri Jain placed reliance upon the decision of the Hon'ble Apex Court rendered in the case of **Archaeological Survey of India vs. State of Madhya Pradesh and others**, (2014) 12 SCC 34. Relevant paragraph is extracted here under:-

"48. It is to be noted that the 1958 Act was enacted for the preservation of ancient and historical monuments and archaeological sites. Vide Section 39, the 1958 Act repealed the Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951 and Section 126 of the States Reorganisation Act, 1956. ***The enactment is a comprehensive legislation dealing with the meaning of "ancient monuments" and "owner" in Sections 2(a) and 2(g) respectively. Under Section 2(j) "protected monument" means any monument which is declared to be of national importance under the 1958 Act. Section 3 specifically declared certain ancient monuments to be deemed to be of national importance which were so declared under the previous enactment of 1951.*** *Further Section 4 of the Act empowered the Central Government to declare certain monuments to be of national importance. Section 9 provides that if any owner fails or refuses to enter into an agreement under Section 6 for maintenance, the Central Government may make an order on any or all matters covered under Section 6(2) of the Act and the same shall be binding*

> *on the owner.* ***It is thus to be noted that the 1958 Act replaced the 1951 Act and covered only the ancient monuments which were declared to be of national importance.*** *Since the Central Government has not declared the said Bade Baba Temple to be an ancient monument vide the 1913 and 1914 Notifications under the 1904 Act, and nor was it declared to be of national importance even under the 1951 Act, the same fell outside the purview of the 1958 Act as well."*
>
> ***(Emphasis Supplied)***

79. It is vehemently argued that the application under Order VII Rule 11 of the CPC is not maintainable since the property was declared as 'protected monument of national importance'. He submitted that till date State ASI /Central ASI is the custodian of the property.

80. It is further argued that it is specifically averred in the respective plaints that even though destruction and restoration of the temple took place, there was no dispute on the property being the birthplace of Lord Shree Krishna till 1669. The dispute commenced in 1669, when the Mughal ruler Aurangzeb ordered his men to demolish the majestic temple and replaced it with a superstructure which was named as 'Shahi Idgah Masjid'. This fact indicates that before the demolition of the temple by Aurangzeb, the temple of Lord Shree Krishna was in existence. The religious character of the suit property was that of a Hindu Temple prior to its demolition.

81. Heavy reliance is placed on **U P Sunni Central Waqf Board vs. Ancient Idol of Swayambhu Lord Vishweshwar**, 2023 SCC Online Allahabad 2760. This Court observed that:

"161. Another point canvassed by plaintiffs' counsel to the non-applicability of Section 3, 4(1) and 4(2) is on the basis of non obstante clause contained in Sub-Section (3) of Section 4, that Section 4 (1) and 4(2) will not apply to any conversion of place effected before such commencement by acquiescence. The bar contained in Section 3, 4 (1) and 4 (2) is negatived by Sub-Section (3) (d) of Section 4, as the forcible act of Mughal Emperor in demolishing part of temple, and thereafter raising illegal construction would not affect the maintainability of suit.

162. ***The Act of 1991 is not an absolute bar upon the parties approaching the courts after its enforcement seeking their right as to place of worship or defining religious character of any place of worship. Sub-Section (3) of Section 4 enumerates certain cases in which the parties can approach the court for redressal of their grievance. Sub-Section (3)(d) is one of those case, where conversion has taken place much before the commencement of the Act and a party had not approached the court, the acquiescence or silence would not bar the action of such party.***

163. As "religious character" has not been defined under the Act, and ***the place cannot have dual religious character at the same time, one of a temple or of a mosque, which are adverse to each other. Either the place is a temple or a mosque.***

... ...

167. Thus, I find that religious character of the disputed place as it existed on 15.08.1947 is to be determined by documentary as well as oral evidence led by both the parties. Unless and until the court adjudicates, the disputed place of worship cannot be called as a temple or mosque.

... ...

184. The Act does not define "religious character", and only "conversion" and "place of worship" have been defined under the Act. ***What will be the religious character of the disputed place can only be arrived by the competent Court after the evidences are led by the parties to the suit.*** *It is a disputed question of fact, as only part and partial relief has been claimed of entire Gyanvapi compound which comprises of settlement plot Nos.9130, 9131 and 9132.*

185. ***Either the Gyanvapi Compound has a Hindu religious character or a Muslim religious character. It can't have dual character at the same time. The religious character has to be ascertained by the Court considering pleadings of the parties, and evidences led in support of pleadings.*** *No conclusion can be reached on the basis of framing of preliminary issue of law. The Act only bars conversion of place of worship, but it does not define or lays down any procedure for determining the reli-*

gious character of place of worship that existed on 15.08.1947."

(Emphasis Supplied)

82. Learned Counsel for the plaintiffs next contended that merely by asserting that a particular property is a mosque, will not deprive the Hindus from exercising their right over the religious place which is being worshipped for ages as a sacred place, as the birthplace of Lord Shree Krishna. He further submitted that if a statue of Hindu idol is placed inside the mosque, it shall not become a temple. Similarly, if *Namaz* is offered inside the temple, it will not become a mosque. It is submitted that the religious character of the property shall remain the same for which, it was constructed.

83. It is also contended that pursuant to an illegal and *void ab initio* compromise, the superstructure came into existence in 1968, whereas the Janmabhoomi Trust was created prior to this erection. Therefore, none of the provisions of the Act of 1991 would apply. The creation of the Janmabhoomi Trust is a matter of fact which would be proved by the evidence during the trial.

84. It is then contended that the plaintiffs have right under Article 25 of the Constitution of India, to regain, hold and manage the property belonging to and possessed by the deity Lord Shree Krishna Virajman, measuring 13.37 acres in Katra Keshav Dev. Under the Hindu Law property once vested in the deity shall continue to be the deity's property. The property vested in the deity is never lost and it can be regained and re-established whenever it is freed, found or recovered from the clutches of invaders, ultras or hoodlums.

85. No mosque was in existence at the time of the auction sale in 1815. A small, dilapidated structure was existing at the corner of Katra Keshav Dev which was called a mosque by Muslims. On the basis of the compro-

mise dated 12.10.1968, a superstructure was raised which is being called as Shahi Masjid Idgah. The deity is the owner and in symbolic possession over the land encroached by defendants no.1 and 2. Sewa Sansthan acted against the interest of the deity and without any power or authority, conceded two bighas land of Katra Keshav Dev to the Committee.

(iii) Bar under the Waqf Act, 1995:

86. Sri C. S. Vaidyanathan, learned Senior Counsel, made a straightforward argument that in the present matter, no question relating to the waqf, waqf property or any issue regarding which, the Waqf Tribunal has jurisdiction, arises. Moreover, if at all any such question arises, that cannot be decided at this stage. The provisions of Act of 1995 are not applicable to any property of Hindu or any religion other than Muslim. Jurisdiction of Civil Court is not barred under the Act of 1995 where the dispute involves a question over which, the Waqf Tribunal does not have jurisdiction to decide. He vehemently argued that the Waqf Tribunal cannot decide a question relating to the nature of the property because of a settled judicial principle 'once a temple, always a temple'. Question as to whether the temple/deity's land is capable of being taken by force, the perpetual character of deity as minor and its consequences, can only be decided by the Civil Court.

87. Learned Senior Counsel submitted that so far as the notification containing the list of waqf of 1944 is concerned, it does not provide any specification of the property such as its area, survey number, description etc. The portion of the suit property which is alleged to be a waqf property, is not identifiable. In the said notification, the details are referred as 'Mutawalli' and not 'Waqif'. All these disputed issues are subject to evidence to be led during the trial. Therefore, it cannot be decided at this stage.

88. He argued that no survey was conducted and the procedure as contemplated under Section 6 of the U. P. Muslim Waqf Act, 1960 was not followed. Therefore, it cannot be said that the suit property was ever notified as a waqf property. The disputed property has never been known as 'Idgah Masjid Aalmgiri', therefore, it appears that the notification of 1944 relates to some other property and not the suit property.

89. Shri Hari Shankar Jain, learned Counsel submitted that as per Section 1(2) of the Waqf (Amendment) Act, 2013, it is provided that it shall come into force on such date as the Central Government may, by notification, in the official gazette appoint. The said amendment was made effective from 01.11.2013. By way of the said amendment in Section 6 of the Act of 1995, the words 'any person interested' were substituted with the words 'any person aggrieved'. Similarly, in Section 7 of the Act of 1995, the words 'or any person interested', were substituted with 'or any person aggrieved.'

90. Shri Jain, advanced his arguments that this amendment is prospective in nature. He relied upon the judgment of ***Assistant Excise Commissioner, Kottayam and Ors. Vs Esthopian Cherian & another***, 2021 (10) SCC 210 and, submitted that there is a profusion of judicial authority on the proposition that a rule or law cannot be considered as retrospective unless it expresses a clear manifest intention to the contrary. It is an established rule that unless a contrary intention appears, legislation is presumed not to be intended to have retrospective operation. The law passed today cannot apply to the events of the past.

91. Shri Jain further submitted that in view of the amended provisions and the judgment referred above, the arguments advanced by learned Counsel for the defendants that any aggrieved person should approach the Waqf Tribunal for settlement of a dispute about the waqf property cannot be accepted. He further submitted that the suit property, which is situated in Katra Keshav Dev Virajman measuring 13.37 acres, was never a waqf

property. The property was never dedicated to a waqf. No aukaf was appointed. No deed was ever executed to entrust the property to any kind of waqf. The entire land of Katra Keshav Dev is vested in the deity, which is being managed by the Janmabhoomi Trust. The defendants have to prove that a valid waqf was created by the Waqif, who had the ownership of the property, and is claimed to be a Mosque.

92. It is further submitted that since a notification was issued in the year 1920 and the property was declared as protected monument, therefore, the alleged notification issued in 1944 has no force. The said notification is *ultra vires* because the Act of 1904 was a Central Act. Notification issued by U.P. Government cannot have any adverse effect on the notification issued under the Central Act in the year 1904. Therefore, alleged notification dated 26.2.1944, is *void ab initio*, *ultra vires* and has no force.

93. Sri Vishnu Shanker Jain, learned Counsel contended that in the Hindu Law, the property in question is a place where Bhagwan Vishnu took 'Avtar' as Lord Krishna. He is a "Swayambhu" deity and the place where the Lord descended is *Asthan*. Therefore, both are worshipped by the Hindu devotees. No person of Muslim community is the owner of any inch of the land of Katra Keshav Dev, including the suit property. Only the owner of the property can dedicate the property to create a valid waqf. Under the Muslim Law, there must be unconditional and permanent dedication of the property to the Allah by a waqf deed.

94. To buttress his arguments, learned Counsel relied upon ***Most Rev. P.M.A. Metropolitan v. Moran Mar Marthoma,*** 1995 Supp (4) SCC 286. The relevant paragraph reads as under:

> ***"89.*** *The conclusions thus reached are****:***
>
> ***1. (a) The civil courts have jurisdiction to entertain the suits for violation of fundamental rights***

guaranteed under Articles 25 and 26 of the Constitution of India and suits.

(b) The expression 'civil nature' used in Section 9 of the Civil Procedure Code is wider than even civil proceedings, and thus extends to such religious matters which have civil consequence.

(c) Section 9 is very wide. In absence of any ecclesiastical courts any religious dispute is cognizable, except in very rare cases where the declaration sought may be what constitutes religious rite.

2. Places of Worship (Special Provisions) Act, 1991 does not debar those cases where declaration is sought for a period prior to the Act came into force or for enforcement of right which was recognised before coming into force of the Act.

(Emphasis Supplied)

95. Sri Jain vehemently argued that it is specifically averred in the plaint that no part of the property of Katra Keshav Dev is a waqf property. Neither any Muslim, nor body, trust, society, board of Muslims had ever claimed any part of Katra Keshav Dev as a waqf property. The Committee or any Muslim party has never claimed that the property of Katra Keshav Dev had been registered and notified in the official gazette as a waqf property under the Muslim Waqfs Act, 1936, the U. P. Muslim Waqf Act, 1960, the Mussalman Wakf Act, 1923, the Wakf Act, 1954 or under Section 5 of Act of 1995. The defendants did not file any document or notification issued under any of the above enactments along with the application.

96. Sri Anil Kumar Singh, learned Senior Counsel, appearing for the plaintiffs, submitted that the suit property was never dedicated to auqaf.

Neither notice was issued, nor any inquiry was conducted with the owner of the property, '*Bhagwan Shree Krishna Lala Virajman',* the deity. No preliminary survey of auqaf was carried out. No report after such survey and inquiry is available. The report must necessarily include nature, object of each waqf and the gross income of the said property. It is specifically averred that in the year 1669-70, during the month of Ramadan, Aurangzeb, the Mughal ruler illegally encroached upon the temple which was constructed by Raja Veer Singh Bundela and started using it as a Mosque. Therefore, no waqf was created since the temple was illegally encroached upon. It cannot be said that the suit property is a waqf property.

97. Learned Counsel relied upon the provisions contained in Section 4 of the Act of 1995 and submitted that for the purpose of preliminary survey of auqaf, the State Government by a notification in the official gazette may appoint for the State a Survey Commissioner of auqaf. The Survey Commissioner, shall after making inquiry submit its report about the existence of auqaf to the State Government. Such report shall contain the nature and object of the waqf, gross income of the property, amount of land revenue, cess, rates and taxes payable, remuneration of Mutawalli, and expenses incurred in the realization of the income.

98. He further submitted that neither the auqaf was ever appointed for the management of the suit property nor a survey was conducted. The recommendations of the survey were never forwarded to or examined by the Waqf Board. The State Government never issued any notification declaring the suit property to be a waqf property as required under Section 5 of the Act of 1995.

99. He further submitted that the Act of 1995 is not applicable to non-Muslim or non-Islamic people and on the properties belonging to them. The property which belongs to the deity of any non-Islamic religion, can never be a waqf property. Apart from Islamic property, any religious

property belonging to any class of assets, land, building, tenancies, tax can never be a waqf property.

100. Mrs. Reena N. Singh, learned Counsel, submitted that the ingredients of a waqf as provided under Section 3(r) of the Act of 1995 are not fulfilled to indicate that the suit property is a waqf property. No property exists in the name of any Mosque/Idgah as waqf in the revenue records. Therefore, no waqf or any waqf deed is in existence. Information under the Right To Information Act, 2005 was obtained from Sub-Divisional Magistrate, Sadar Mathura. It is reported that there is no entry in the revenue records relating to any property named as 'Shahi Idgah'. Further, it was reported that in Khasra/Khewat, the name of Shahi Idgah Masjid does not find place. In Khasra no.825, in the column *'Abadi'* the name of the owner as '***Sri Thakur Krishna Janmabhoomi Khewat 255'*** is entered. This report establishes that in the revenue records, names of Shahi Idgah and Mosque do not exist.

101. It is further submitted that in the report card of Shahi Masjid Idgah with 'WAQF ID UP-510057' the column of 'Name of the document (s)/ certificate (s)' submitted in registration of Waqf is found to be blank. The column 'inspection done' indicates 'No'. This information is available on the website of Waqf Asset Management System (WAMSI). Since mandatory requirements as provided under Sections 4 and 5 of the Act of 1995 were not completed, it cannot be assumed that the suit property is a waqf property.

102. It is contended that so far as the nomination made at Serial No. 43 in the list of Sunni Aukaf, annexed with the Notification of 1944, is concerned, the nature of the waqf property is mentioned as Idgah and Mosque. The nature of both the entities of Idgah and Mosque are different. It is also submitted that the United Province Muslim Waqf Act, 1936 was repealed by U.P. Muslim Waqf Act, 1960. This Act was then re-

pealed by the U.P. (Second) Repealing Act, 2021, therefore, the Waqf List of 1944 is *non-est*.

103. Learned Counsel relied upon the judgment of **Salem Muslim Burial Ground Protection Committee Versus State of Tamil Nadu and Ors**, Civil Appeal Nos. 7467-7470 of 2014. The relevant paragraph is quoted hereunder:-

> *"32. A plain reading of the provisions of the above two Acts would reveal that the notification under Section 5 of both the Acts declaring the list of the wakfs shall only be published after completion of the process as laid down under Section 4 of the above Acts, which provides for two surveys, settlement of disputes arising thereto and the submission of the report to the State Government and to the Board. Therefore, conducting of the surveys before declaring a property a waqf property is a sine qua non. In the case at hand, there is no material or evidence on record that before issuing notification under Section 5 of the 16 Waqf Act, 1954, any procedure or the survey was conducted as contemplated by Section 4 of the Act.* ***In the absence of such a material, the mere issuance of the notification under Section 5 of the Act would not constitute a valid wakf in respect of the suit land.*** *Therefore, the notification dated 29.04.1959 is not a conclusive proof of the fact that the suit land is a wakf property. It is for this reason probably that the appellant Committee had never pressed the said notification into service up till 1999."*

(Emphasis supplied)

104. Reliance is placed upon the judgment of the Hon'ble Apex Court in **Punjab Waqf Board Vs. Sham Singh Harika**, (2019) 4 SCC 688**.** She further added that before issuance of notification under Section 5 (2) of the Act of 1995, a notice to person affected is necessary to be issued by the Waqf Board and, if no such notice is issued, any notification so issued is not binding. The suit property is vested in the name of Hindu deity, therefore, it cannot be converted into a waqf property.

105. Sri Vinay Sharma, learned Counsel submitted that so far as the question as to whether the property is a waqf property is concerned, this question cannot be decided at this stage. Since as per the provision of Act of 1995 certain legal requirements are to be followed to declare a property to be a waqf property, therefore, this fact can only be decided on the basis of the evidence to be led by the parties during the trial. No evidence is brought on record by the defendants that any survey was conducted under Section 4 of the Act of 1995 and that the State Government issued a notification declaring the suit property to be a waqf property.

106. Shri Ashutosh Pandey, one of the plaintiffs, appearing in person, submitted that no document of title is brought on record by the defendants. The electricity bill is also being paid by the plaintiffs. An FIR under Section 135 of the Electricity Act, 2003 was lodged against the defendants regarding theft of electricity on the suit property and a fine was also imposed upon them. The possession of the defendants over the property in issue is not admitted by the plaintiffs. The Hindu devotees are offering prayers at '*Krishan Koop'* situated in the Idgah Campus. The defendants failed to show from where they have derived the property. He further submitted that the cause of action, the question of title and possession, the legality of the compromise decree and the construction raised pursuant to alleged compromise are questions of fact, which can only be adjudicated upon by leading oral and documentary evidence by the parties after framing of issues.

107. It is also submitted that the subject property in no way, is a waqf property because no waqf was ever created and no waqf deed was executed showing the dedication of the said property to the Almighty. The Waqf Board is arrayed as defendant because they had accorded permission to the defendant, the Committee, to enter into fraudulent and illegal compromise dated 12.10.1968. The provisions of Sections 6, 85 and 108-A of the Act of 1995 or any other provision of this Act do not apply to the suit property. There are historical, religious, traveller accounts and other evidence to prove that the subject property was a temple commonly known as temple of Keshav Dev.

(iv) Bar under the Limitation Act,1963:

108. Sri Vishnu Shankar Jain, learned Counsel contended that the suit is not barred by any provisions of the Limitation Act,1963. It is specifically averred that the cause of action is accruing every day. When the plaintiffs visited Mathura for the *darshan* of Lord Shree Krishna, on the dates as mentioned in their respective plaints, they were shocked to see that a mosque was standing over the birthplace of Lord Shree Krishna. The plaintiffs and other members met the members of the Committee and asked them to remove the illegal construction raised by them over the temple land. They were handed over a copy of the compromise dated 12.10.1968 qua Suit No. 43 of 1967. The Waqf Board refused to remove the construction raised by them. Thereafter, the plaintiffs sent a notice under Section 89 of the Act of 1995 to the Waqf Board which was duly served upon them but no reply was received.

109. He then contended that the cause of action is accruing against the wrongs committed by the defendants every day. It further accrued when plaintiffs came to know about the compromise dated 12.10.1968 and the decree passed by the Civil Court. Further, the cause of action arose after the expiry of 2 months' notice when no action was taken by the Waqf Board for removal of encroachment on the suit property. Therefore, the

period of limitation would run from the date of knowledge as contemplated in Article 59 of the Limitation Act,1963. Part IV of the Limitation Act,1963 deals with suits relating to decrees and instruments. Article 59 deals with the description of suit to cancel or set aside an instrument or decree or for the rescission of a contract. The period of limitation is three years. The time from which the period of limitation begins to run is when the facts entitling the plaintiffs to have the instrument or decree canceled or set aside or the contract rescinded first became known to them.

110. Shri Jain laid emphasis upon these provisions and vehemently argued that the plaintiffs filed the suits within the period of limitation from the date of knowledge about the illegal construction raised by the defendants as well when they came to know about the *void-ab-initio* and fraudulent compromise entered into between Sewa Sansthan and the Committee in 1968.

111. Shri Rahul Sahai, learned Senior Counsel, submitted that the provisions of Sections 56, 58, 59, 64, 65 and 113 of the Limitation Act, 1963 are not applicable. When the plaintiffs visited the suit property on a given date as mentioned in the clause of accrual of cause of action, first time they came to know that defendants no. 1 and 2, had illegally and unlawfully, encroached upon the land of the deity on the basis of compromise dated 12.10.1968. They are offering *Namaz* on this place. The plaintiffs came to know about the fact that the Janmabhoomi Trust was negligent in protecting the suit property. Immediately thereafter, when the prayer to remove the said illegal structure was turned down by defendants no. 1 and 2, they filed the present suit within the period of limitation. The present suit is a title suit and not a suit for conversion of the property.

112. He placed reliance upon the decision of the Hon'ble Apex Court rendered in the case of **Daya Singh & another vs. Gurudev Singh (dead) by LRS & ors.,** (2010) 2 SCC 194**.** The question before the Hon'ble Apex Court was whether the suit was barred by Section 58 of

Limitation Act, 1963 since the parties entered into the compromise in 1972 and the suit was filed on 21.8.1990. The Hon'ble Apex Court observed as under :-

> *"16. Keeping these principles in mind, let us consider the admitted facts of the case. In Para 16 of the plaint, it has been clearly averred that the right to sue accrued when such right was infringed by the defendants about a week back when the plaintiffs had for the first time come to know about the wrong entries in the record-of-rights and when the defendants had refused to admit the claim of the plaintiffs. Admittedly, the suit was filed on 21-8-1990.* ***According to the averments made by the plaintiffs in their plaint, as noted herein-above, if this statement is accepted, the question of holding that the suit was barred by limitation could not arise at all. Accordingly, we are of the view that the right to sue accrued when a clear and unequivocal threat to infringe that right by the defendants when they refused to admit the claim of the appellants i.e. only seven days before filing of the suit. Therefore, we are of the view that within three years from the date of infringement as noted in Para 16 of the plaint, the suit was filed. Therefore, the suit which was filed for declaration on 21-8-1990, in our view, cannot be held to be barred by limitation.***
>
> ***17. Therefore, the courts below including the High Court had proceeded entirely on a wrong footing that the cause of action arose on the date***

of entering into the compromise and, therefore, the suit was barred by limitation; whether or not the compromise decree was acted upon and whether delivery of possession had taken place has to be decided by the trial court before it could come to a proper conclusion that the suit was barred by limitation.

18. In this view of the matter, we do not find any ground to agree with the findings of the High Court that the suit was barred by time because of its filing after 18 years of entering into the compromise. ***The question of filing the suit before the right accrued to them by compromise could not arise until and unless infringement of that right was noticed by one of the parties.*** *The High Court in the impugned judgment, in our view, had fallen in grave error in holding that the suit was barred by time and had ignored to appreciate that the rights of the appellants to have the revenue record accrued first arose in 1990 when the appellants came to know about the wrong entry and the respondents failed to join the appellants in getting it corrected. In our view, the High Court was not justified in holding that mere existence of a wrong entry in the revenue records does not, in law, give rise to a cause of action within the meaning of Article 58 of the Act. No other point was urged before us by the learned counsel for the parties."*

(Emphasis Supplied)

113. Learned Senior Counsel Shri Anil Kumar Airi, assisted by Shri Hare Ram Tripathi, vehemently argued that Article 59 of the Limitation Act, 1963 provides a period of limitation of three years to cancel or to set aside an instrument or decree or for the rescission of a contract. It is specifically averred in the plaint that the cause of action further accrued on 16.01.2020 when the plaintiffs came to know about the compromise dated 12.10.1968 and decree passed thereon, by the Civil Court. The relief is not barred by the Limitation Act, 1963 as period of limitation starts from the date of knowledge as provided under Article 59 Part IV of the Limitation Act, 1963. The plaintiffs have also prayed a decree of declaration to the effect that decree dated 20.07.1973 and 07.11.1974 passed in Civil Suit No. 43 of 1967 by Ld. Civil Judge, Mathura are not binding on the plaintiffs.

114. Sri Vinay Sharma, learned Counsel, submitted that the provisions of Sections 56, 58, 59, 64, 65 and 113 of the Limitation Act, 1963 are not applicable to the plaintiffs because when the plaintiffs visited the suit property, first time, they came to know that defendants no. 1 and 2 had illegally and unlawfully, encroached upon the land of the deity on the basis of compromise dated 12.10.1968. The question of limitation cannot be decided at the stage of disposal of application under Order VII Rule 11 of CPC.

(v) Bar under the Specific Relief Act, 1963:

115. Shri C. S. Vaidyanathan, learned Senior Counsel, contended that the disputed property is dedicated to the temple and the idol is in constructive possession at all times. The deity/idol has possession and title over the property, therefore, the suit for mandatory injunction is not barred by any provision of the Specific Relief Act, 1963.

116. It is next contended on behalf of the plaintiffs that it is alleged by the defendants that plaintiffs have simply filed the suits for declaration

and injunction without seeking relief for possession, as defendant, the Committee, is in possession. On this count, it is submitted that the construction in question has been valued and proper Court fees has been paid. It is one of the reliefs claimed by the plaintiffs that the suit of the plaintiffs be decreed against the defendants directing them to remove the illegal construction raised by them encroaching upon the land within the area of Katra Keshav Dev, Mathura and to hand over vacant possession to the Janmabhoomi Trust within the time provided by the Court. Therefore, the suits are not barred under any provision of the Specific Relief Act, 1963.

117. Reliance has been placed upon the decision of the Hon'ble Apex Court rendered in the case of ***A.A. Gopalakrishnan v. Cochin Devaswom Board***, (2007) 7 SCC 482. The Hon'ble Apex Court observed as under:

> ***"10. The properties of deities, temples and Devaswom Boards, require to be protected and safeguarded by their trustees/archakas/shebaits/ employees. Instances are many where persons entrusted with the duty of managing and safeguarding the properties of temples, deities and Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy, or adverse possession. This is possible only with the passive or active collusion of the authorities concerned. Such acts of "fences eating the crops" should be dealt with sternly. The Government, members or trustees of boards/ trusts, and devotees should be vigilant to prevent any such usurpation or encroachment. It is also the duty of courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation."***

(Emphasis Supplied)

118. It is next contended that the plaintiffs never admitted lawful possession of the defendants over the suit property. It is the case of the plaintiffs that pursuant to illegal, fraudulent and *void ab initio* compromise dated 12.10.1968 two bigha land within the area of Katra Keshav Dev, which was always a part of the temple, was conceded to the Committee. Since all the constructions were illegally raised pursuant to the aforesaid illegal compromise, therefore, it would not be prudent to say that the possession of the defendants over the property is admitted to the plaintiffs.

119. It is also submitted that since the subject building is a protected monument, therefore, the decree dated 7.11.1974, based on compromise, is null and void, *non-est* and inoperative. Thus, no question for any person to seek relief of possession arises at all.

(vi) Bar under Order XXIII Rule 3A of the CPC:

120. Sri Vishnu Shanker Jain, learned Counsel for the plaintiffs, while referring to the provisions of Order XXIII Rule 3A of the CPC submitted that the provisions apply where a compromise has been entered into between competent parties. Sewa Sansthan did not have any right to file Suit No.43 of 1967 and to enter into any compromise relating to the property of the deity with anyone. He contended that it is the case of the plaintiffs that Rai Krishan Das and Rai Anand Krishan, the heirs of Raja Patnimal executed registered sale deed on 8.2.1944 for a consideration of Rs.13,400/- in favour of Mahamana Pt. Madan Mohan Malviya and two others. Said consideration was paid by Late Jugal Kishore Birla. The title and the possession of 13.37 acres land of Katra Keshav Dev was transferred to them. Sri Jugal Kishore Birla had taken a pledge to construct a glorious temple at Katra Keshav Dev, glorifying the birthplace of Lord Shree Krishna. He created the Janmabhoomi Trust on 21.2.1951. The Trust Deed was registered on 9.3.1951. He dedicated the entire land of

Katra Keshav Dev to the deity Lord Shree Krishna Virajman. Thus, the entire land situated in Katra Keshav Dev was dedicated, vested and transferred to the Janmabhoomi Trust. No trustee had individual right over this property. Unfortunately, the Janmabhoomi Trust failed to perform its duty to secure, preserve and protect the Janmabhoomi Trust property. The Janmabhoomi Trust has been defunct since 1958.

121. Sri Jain, further submitted that since the entire property of Katra Keshav Dev vested in the Janmabhoomi Trust, Sewa Sansthan was not the owner and in possession over the suit property. Therefore, it had no right or authority to enter into compromise dated 12.10.1968 in Civil Suit No.43 of 1967 with the Committee. The decree passed in Civil Suit No.43 of 1967 based on illegal compromise is null and *void ab initio.* It was well within the knowledge of Sewa Sansthan and the Committee that Sewa Sansthan was not the owner of the property of Katra Keshav Dev and not competent to enter into a compromise. Thus, they committed fraud and misrepresented before the Court.

122. It is further submitted that the Janmabhoomi Trust and the deity were not parties to Suit No. 43 of 1967 as well as to the compromise dated 12.10.1967. No *Shebait* or next friend to the deity was appointed to protect the interest of the idol. Sewa Sansthan is a separate legal entity from the Janmabhoomi Trust. Suit No.43 of 1967 was filed by Sewa Santhan and not by the Janmabhoomi Trust. Sewa Sansthan had no authority over the property to concede valuable property to the Committee. The compromise was entered into between the parties to defeat the interest of the deity. Since the plaintiffs are strangers to the proceedings of Suit No.43 of 1967, therefore, the provisions contained under Order XXIII Rule 3A of the CPC do not apply. The decree dated 7.11.1974 is not binding upon the plaintiffs. The present suits filed by the plaintiffs, as next friend of the deity *Lord Shree Krishna Virajman*, are not barred under Order XXIII Rule 3A of the CPC.

123. Sri Jain further contended that an application under Section 92 of the CPC was filed in the Court of District Judge, Mathura on 7.5.1993, titled as **Lord Shree Krishna vs. Vamdeo Ji Maharaj (Chairman), Shree Krishna Janamsthan Sewa Sangh Mathura**. A permission was sought to institute a suit, with a prayer to remove defendants no.1 to 6 of the said suit from the trusteeship, for direction to furnish the account of the trust property, to set up a scheme for carrying out the object of the trust and to dissolve Sewa Sansthan. The said application was rejected, vide order dated 06.05.1994. Against this, First Appeal No.199 of 1996 was dismissed by this Court, vide its judgment and order dated 23.02.1997. It held that the entire property of Katra Keshav Dev measuring 13.37 acres had vested in the Janmabhoomi Trust and that Raja Patnimal was the owner of the property. The entire property of Katra Keshav Dev was purchased by Mahamana Pt Madan Mohan Malviya, Goswami Ganesh Dutt and Professor Bhikhanlal Attrrey through registered sale deed executed on 8.2.1944. They became the owner and in possession of the said property. It was also held that Sewa Sansthan was not the trustee of the Janmabhoomi Trust property, therefore, it could not represent the Janmabhoomi Trust. Since the trustees were not made parties, therefore, application under Section 92 of the CPC was found to be not maintainable.

124. It is further contended that in Suit No.43 of 1967, it was admitted that the entire property was vested in the Janmabhoomi Trust by virtue of trust deed executed on 21.02.1951. Late Jugal Kishore Birla had created the Janmabhoomi Trust. The civil suit filed by certain Muslims claiming ownership and possession over the suit property had been dismissed by the Civil Court and the decree was operating in favour of Hindus.

125. To buttress his argument, learned Counsel for the plaintiffs placed reliance upon the decision of the Hon'ble Apex Court in **Indian Bank vs.**

Satyam Fibbers (India) Pvt. Ltd., 1996 (5) SCC 550. Relevant paragraph is extracted as under:

> ***"30. Forgery and fraud are essentially matters of evidence which could be proved as a fact by direct evidence or by inferences drawn from proved facts."***
>
> ***(Emphasis Supplied)***

126. He also relied upon the judgment in **A V Papayya Sastry and others vs. Govt of A.P. and others**, 2007 (4) SCC 221, where it has been held that:

> ***"22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non est in the eye of the law. Such a judgment, decree or order—by the first court or by the final court—has to be treated as nullity by every court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings."***
>
> ***… … ...***
>
> ***"The principle of 'finality of litigation' cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants."***
>
> ***(Emphasis Supplied)***

127. Reliance is thereafter, placed upon the decision rendered by the Hon'ble Apex Court in the case of **Chandro Devi vs. Union of India**, 2017 (9) SCC 469. Relevant paragraph is extracted here under:-

> ***"6…….There can be no dispute with the proposition that if there is fraud, which leads to passing of a judgment, then fraud vitiates all actions taken consequent to such fraud and this would mean that the judgment would be set aside. However, before setting aside the judgment, we must come to the conclusion that the action was fraudulent."***
>
> ***(Emphasis Supplied)***

128. Learned Counsel also placed reliance upon a decision in **Bilkis Yakub Rasool v. Union of India and Others,** 2024 SCC OnLine SC 25, wherein it has been held that:-

> ***"194. Further, fraud can be established when a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii), recklessly, being careless about whether it be true or false. While suppression of a material document would amount to a fraud on the Court, suppression of material facts vital to the decision to be rendered by a court of law is equally serious. Thus, once it is held that there was a fraud in judicial proceedings all advantages gained as a result of it have to be withdrawn. In such an eventuality, doctrine of res judicata or doctrine of binding precedent would not be attracted since***

an order obtained by fraud is non est in the eye of law."

… … …

197. A Division Bench of this Court comprising Justice B. R. Gavai and Justice C.T. Ravikumar placing reliance on the dictum in S.P. Chengalvaraya Naidu, held in Ram Kumar v. State of Uttar Pradesh, AIR 2022 SC 4705, that a judgment or decree obtained by fraud is to be treated as a nullity."

(Emphasis Supplied)

129. It is further submitted that the plaintiffs are seeking decree of declaration to the effect that the judgments and decree, dated 20.7.1973 and 7.11.1974 are not binding on the plaintiffs. The provisions under Order XXIII Rule 3A of the CPC are applicable on such decree which is passed on the basis of compromise between the parties to the suit and it has validly been entered between two competent parties. Therefore, the plaint is not liable to be rejected under Order XXIII Rule 3A of the CPC.

130. Learned Counsel placed reliance upon the decision of this Court in **Srimati Suraj Kumari vs. District Judge Mirzapur & Ors.,** AIR 1991 Alld 75. It is observed that:-

"22. The petitioner's second submission regarding the applicability of Order XXIII Rule 3A of the Code of Civil Procedure is misconceived. ***The provision is confined only to the parties to the suit. The said provision is not applicable to a stranger to the said compromise decree. A suit by stranger to set aside the compromise decree, which affects***

> ***his rights is not barred by the said provision. Order XXIII Rule 3A of the Code cannot be read dehors its earlier provision of the same chapter.*** *The said provision is only a part of the entire chapter of Order XXIII of the Code which prescribes provisions or withdrawals and adjustment of the suit. Order XXIII Rule 3 of the Code provides for a situation where the parties have arrived at a compromise.* ***Order XXIII Rule 3 & Rule 3A of the Code as added by Amending Act No. 104 of 1976 read together, makes it clear that a party to the suit is debarred from filing suit for setting aside compromise decree on the ground of being unlawful. Such a party has remedy by moving appropriate application before the Court concerned which has passed the compromise decree."***
>
> ***(Emphasis Supplied)***

131. He further relied upon a judgment of the Hon'ble Apex Court in ***A.A. Gopalakrishnan v. Cochin Devaswom Board***, (2007) 7 SCC 482 : 2007 SCC OnLine SC 914:-

> *"Order 23 Rule 3 CPC deals with compromise of suits. Rule 3-A provides that no suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.* ***We are of the considered view that the bar contained in Rule 3-A will not come in the way of the High Court examining the validity of a compromise decree, when allegations of fraud/collusion are made against a statutory authority which entered into such compromise. While it is true that de-***

crees of civil courts which have attained finality should not be interfered with lightly, challenge to such compromise decrees by an aggrieved devotee, who was not a party to the suit, cannot be rejected, where fraud/collusion on the part of officers of a statutory board is made out."

(Emphasis Supplied)

132. It is submitted that the judgment and decree passed on the basis of the compromise between the parties in Suit No.43 of 1967 is challenged in the present suits. As per the provisions contained in Order XXIII and Rule 3A of the CPC, no suit shall lie to set aside a decree on the ground that the compromise on which, the decree is based was not lawful. Since the plaintiffs were not parties to the suit, the compromise dated 12.10.1968, is not binding upon them. The provision of Order XXIII Rule 3A of the CPC do not apply.

133. Sri Anil Kumar Airi, learned Senior Counsel, assisted by Sri Hare Ram Tripathi, submitted that the title of Raja Patnimal over the property is undisputed. The area of the property situated at Katra Keshav Dev, measuring 13.37 acres, is also not challenged. It is submitted that the averments made in the plaint about historical development, execution of sale deed in favour of Mahamana Pt. Madan Mohan Malviya and two others and creation of the Janmabhoomi Trust, are based on the documentary evidence.

134. It is next submitted that according to the provisions contained in Sections 90 of the Indian Evidence Act, 1872 there is a presumption about the genuineness of the documents, the dedication of the property and execution of the registered trust deed about the suit property. Therefore, Order VII Rule 11 of the CPC cannot wash out the claim of the plaintiffs. In 1951, the Janmabhoomi Trust was created and its creation cannot be chal-

lenged because it was a public trust. Once a trust, always a trust. The Court is always the protector of the rights and the existence of a perpetual minor. Once the property was vested in the Janmabhoomi Trust, no one could have filed a suit or taken any action against it.

135. The compromise decree was obtained on the basis of fraud and misrepresentation and as the plaintiffs were not the parties either in Original Suit No.43 of 1967 or in the illegal compromise, therefore, it can be challenged by the plaintiffs through present proceedings. The suits of the plaintiffs are not barred under the provisions of Order XXIII Rule 3A of the CPC. The compromise dated 12.10.1968 entered into between Sewa Sansthan and the Committee and decree passed in Civil Suit No.43 of 1967 are not binding on the devotees of '*Bhagwan Shree Krishan'*. The parties to Suit No.43 of 1963, with a view to defeat the interest of deity and devotees, fraudulently entered into compromise on 12.10.1968. The present suit is filed by plaintiffs as next friend of deity of Lord Shree Krishna, which is not barred under Order XXIII Rule 3A of the CPC.

136. Learned Counsel for the plaintiffs in the remaining suits adopted the arguments made on behalf of the plaintiffs in their respective cases.

REPLY BY LEARNED COUNSEL FOR THE DEFENDANTS.

137. Learned Counsel for the defendants, in reply, submitted that the Act of 1991 bars conversion of places of worship as they existed on 15.08.1947. The preamble of the aforesaid Act is quoted thus:

> *"An act to prohibit conversion of any place of worship and to provide for the maintenance of the religious character of any place of worship as it existed on the 15th day of August,1947, and for matters connected there with or incidental thereto."*

138. It is further submitted that the argument of the learned Counsel for the plaintiffs that the provisions of the Act of 1904 are applicable over the suit property, cannot be accepted as there is no mention of the said Act of 1904 in the Act of 1991. The present suit admits continuous possession and use of the mosque by the Committee and the said mosque is in existence even today. The terms of the compromise are admitted in the suit and the existence of mosque prior to 1968 and continuing as such after the compromise is admitted. The notification of Public Works Department of 1920 also indicates that a mosque was in existence at the time of issuance of such notification. It establishes that the site has been utilized as a mosque prior to 1920 and continues to be so, till today. Therefore, the bar under the Act of 1991 and the Limitation Act,1963 shall apply.

139. She further submitted that the Act of 1904 ceased to have effects, therefore, its provisions are not applicable and the suit property is a waqf property. The suit property (Mosque) has been notified under the list annexed with the notification of 1944 as a waqf property, therefore, the suit is barred by the provisions of the Act of 1995. The plaintiffs have arrayed Waqf Board as a defendant, thus treating the suit property as a waqf property.

140. She further submitted that it is averred in the respective plaints that the mosque was built by Aurangzeb in 1669-70. It is also averred that after partial demolition of the pre-existing temple, at the site, a superstructure was raised which was named as 'Shahi Idgah Masjid'. Thus, the religious character of disputed property as Idgah Mosque has been admitted by the plaintiffs. Therefore, it is not required to determine the religious character of the structure by leading evidence. The possession of the defendant over the said mosque on the date of filing of the suits is admitted. It is also admitted in the plaint that the mosque existed prior to and after independence. By way of the present suits, plaintiffs are asking for a change of the said religious character by converting an existing mosque

into a temple. It is also admitted by the plaintiffs that judgment dated 2.12.1935 held that *Kacchi Kursi* was to be treated as a part of Masjid.

141. It is then contended that the argument raised by the plaintiffs that the religious character is not defined in the Act of 1991 and the religious character of the structure is to be determined by leading evidence, is fallacious. The religious character of a place stands determined by nomenclature defined in Section 2 (c) of the Act of 1991.

142. It is submitted that the reliance placed on the judgment of **Anjuman Intezamia Masjid vs. Rakhi Singh**, (supra) is incorrect as the said judgment is not applicable to the present case.

143. Insofar as the argument made on behalf of the plaintiffs that the bar under Section 4(1) and (2) is negated by sub-section (3) (d) is concerned, it is submitted that Section 4(3)(d) of the Act of 1991 protects all the conversions that may have taken place by acquiescence thereby making it clear that such conversion will not be tested on the touchstone of religious character of the said place of worship as existed on 15.8.1947.

144. The existence of compromise entered into between the parties to Suit No.43 of 1967 is averred by the plaintiffs in their respective plaints. The decree was passed in accordance with the compromise entered into between the parties and the suit was decreed, vide its judgment and orders dated 20.07.1973 and 07.11.1974. Certain modification/constructions were carried out pursuant to that compromise. These constructions were carried out in 1968 and were within the knowledge of the plaintiffs since they have made specific averments in their plaints. Basis the averments made in the plaint, it is an admission on the part of the plaintiffs that they were ousted in 1968, thus the cause of action would commence from the date of such ouster. The alleged ouster in 1669-70 would not give the plaintiffs continuous cause of action as the alleged wrongful act of encroachment was complete on the date of ouster.

145. The plaintiffs have no continuing cause of action and their rights were extinguished at the time of alleged encroachment and raising of superstructure. In spite of having knowledge of visual changes carried out at the suit property, the plaintiffs did not take any action for more than 50 years. The changes made by the defendants were complete in nature and, therefore, it cannot be said that the plaintiffs had no cause of action since 1968.

146. Gazette Notification dated 26.2.1944, along with the list of Aukaf under the United Province Muslim Act, 1936 indicate subject matter mosque as a waqf property. Therefore, changing of religious character of mosque to that of a temple would be barred by the Act of 1991. No mixed question of fact and law arises in view of the said admission and documents placed on record.

147. There is no pleading regarding the Act of 1904 or the Act of 1958 in the plaints. The plaintiffs have not been able to show any notification under the Act of 1958 issued by the Central Government in respect of Idgah Mosque therefore, the said Act is not applicable.

148. It is further submitted that the judgment in ***Archaeological Survey of India Vs. State of M.P. & Ors.*** (supra), relied upon by the plaintiffs is not applicable. Reliance is placed on the following observation:

> *"In order to attract the applicability of 1958 Act, declaration in respect of a monument has to be made by the Central Government under Section 4 of 1958 Act. Section 4 of the 1958 Act, provides that where the Central Government is of the opinion that any ancient monument or archaeological site and remains not included in Section 3 is of national importance, it may, by notification in the Official Gazette, give two months' notice of its inten-*

tion to declare such monument to be of national importance".

149. It is further submitted that the judgment of ***U P Sunni Central Waqf Board vs. Ancient Idol of Swayambhu Lord Visheshwar***, 2023 SCC Online Allahabad 2760, is not applicable. It is nowhere observed in this judgment that the applicability of the Act of 1991 requires a trial.

150. Learned Counsel submitted that there is no pleading of fraud and misrepresentation regarding compromise dated 12.10.1968 in the plaints. Section 17 of the Limitation Act, 1963 provides that limitation will not stop running if the plaintiffs could have discovered the fraud with a reasonable diligence. Therefore, the cause of action is not, as alleged in plaint, continuing on the date of filing of the suit. The limitation would run from 1968 and the plaints are thus, barred by the Limitation Act,1963.

151. Learned Counsel relied upon the judgment of **Balkrishna Savalram Pujari & others vs. Shri Dhyaneshwar Maharashtra Sansthan & others** AIR 1959 SC 78. Reliance is placed on the following paragraphs:

"… … ... If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. … … …

... ... .Thus considered it is difficult to hold that the trustees' act in denying altogether the alleged rights of the Guravs as hereditary worshipers and in claiming and obtaining possession from them by their suit in 1922 was a continuing wrong. ... ...

... ...Can it be said that, after the appellants were evicted from the temple in execution of the said decree, the continuance of their dispossession

was due to a recurring act of tort committed by the trustees from moment to moment? ***As soon as the decree was passed and the appellants were dispossessed in execution proceedings, their rights had been completely injured, and though their dispossession continued, it cannot be said that the trustees were committing wrongful acts or acts of tort from moment to moment so as to give the appellants a cause of action de die in diem… … ...where the wrongful act complained of amounts to ouster, the resulting injury to the right is complete at the date of the ouster and so there would be no scope for the application of 23 in such a case… … ...****"*

(Emphasis Supplied)

Further, reliance is placed on ***Khair Mohammad and others vs. Jannat & ors****,* AIR 1940 Lah 359 . The following paragraph is referred -

"… … ... Where the injury complained of is complete on a certain date, there is no "continuing wrong" even though the damage caused by that injury might continue.

In such a case the cause of action to the person injured arises, once and for all, at the time when the injury is inflicted, and the fact that the effects of the injury are felt by the aggrieved person on subsequent occasions, intermittently or even continuously, does not make the injury a "continuing wrong" so as to give him a fresh cause of action on each such occasion. … … …"

(Emphasis Supplied)

The judgment of ***Mosque, & ors vs. Shiromani Gurudwara Prabandhak Committee***, AIR 1938 Lah 369 is also referred. Reliance is placed on the following paragraph:

> *"... ... ... In this aspect of the question, the defendants' refusal to allow the Mahomedans to pray on the site of the mosque could not constitute a "continuing wrong" within the meaning of Section 23 of the Lim. Act. For when all rights of Mahomedans in the mosque were extinguished and the Sikhs became the owners of the building, the "right to pray" in the mosque was also extinguished and in refusing that right to the plaintiffs the defendants cannot be held to be guilty of any wrong, much less a "continuing" one ... ..."*

152. It is submitted that in the above referred judgment, it is observed that, if the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. The cause of action regarding visiting of temple is illusionary to avoid bar of limitation, while it is admitted in the plaint that Aurangzeb had constructed the mosque in 1669.

153. Since the plaintiffs claim themselves to be the next friend of the deity and the *Asthan* as well the devotees and worshippers of Lord Shree Krishna, an irresistible inference is drawn that the plaintiffs would be visiting Mathura regularly to worship Lord Shree Krishna. But they abstained themselves from raising any grievance against the admitted physical changes that were carried out to the suit property since 1968.

154. Insofar as the submission on behalf of the plaintiffs that the deity/ idol is a perpetual minor and is thus not bound by limitation is concerned,

it is submitted that such analogy has been negated by the Supreme Court in **M. Siddique vs. Mahant Suresh Das**, **(supra)** (Ayodhya Judgment). Reliance is placed on the following observation :-

> ***"544. The analysis of the legal position on the applicability of the law on perpetual minority by S.U. Khan, J. commends itself. Based on the judicial precedents analysed above, it is an established position that a deity cannot on the ground of being a perpetual minor stand exempted from the application of the Limitation Act. The submission which was urged by Mr C.S. Vaidyanathan is contrary to the jurisprudence of close to a century on the issue. We follow the line of precedents emanating from the Privy Council, this Court and several High Courts noted earlier. The applicability of the law of limitation cannot be ruled out on the basis of the theory of perpetual minority."***
>
> ***(Emphasis Supplied)***

155. With respect to the argument advanced by the plaintiffs that 'Asthan Shree Krishan Janmabhoomi Katra Keshav Dev Khewat No. 255 in Mauja Mathura Bazar, city and district Mathura' is a juristic person, therefore, it would not be hit by the bar of limitation. Mrs. Ahmadi rebutted that it is illegally claimed to be '*Asthan'*. The said proposition that *Asthan* is a juristic person has also been negated by the Hon'ble Apex Court in ***M. Siddiq vs. Mahant Suresh Das (supra) (Ayodhya Case)***. Reliance is placed on the following observations -

> *"249. It is for all the reasons highlighted above that the law has till today yet to accept the conferral of legal personality on immovable property. Re-*

ligiosity has moved hearts and minds. The Court cannot adopt a position that accords primacy to the faith and belief of a single religion as the basis to confer both judicial insulation as well as primacy over the legal system as a whole. From Shahid Gunj to Ayodhya, in a country like ours where contesting claims over property by religious communities are inevitable, our courts cannot reduce questions of title, which fall firmly within the secular domain and outside the rubric of religion, to a question of which community's faith is stronger.

250. On a consideration of all the factors outlined above, it is thus held that the second plaintiff in Suit No. 5 — "Asthan Shri Ram Janam Bhumi" is not a juristic person."

(Emphasis Supplied)

156. It is submitted that only if *Shebait* is minor, he can avail the benefit of exemption from the Limitation Act, 1963. The learned Counsel relied upon the judgment of ***M. Siddiq vs. Mahendra Suresh Das***, 2020 (1) SCC 1 and referred to the following paragraph:-

"It is established position that a deity cannot on the ground of being a perpetual minor stand exempted from the application of the Limitation Act,*1963*. The applicability of law of limitation cannot be ruled out on the basis of the theory of perpetual minority, therefore, no mixed question of fact and law arises as the law lays down that deity is bound by limitation."

(Emphasis Supplied)

157. She further rebutted that the judgments relied upon on behalf of the plaintiffs in the case of ***Popat and Kotecha vs. State Bank of India Staff Association,*** (2005) 7 SCC 510 and **Deity Sri Pabuji Maharaj vs. Board of Revenue,** 2023 SCC OnLine Raj 1690 are not applicable**.**

158. It is submitted that there is no pleading regarding the U.P. Muslim Waqf Act, 1936 in the plaints. Section 112 of the Act of 1995 saves all action taken under the Waqf Act, 1954 and Section 69 (2) of the Waqf Act, 1954 saves all action taken under the State Acts, including the U.P. Muslim Waqf Act, 1936. It is also submitted that it is wrong to say that in view of notification of 1920 issued under the Act of 1904, the structure could not have been notified as a waqf property in 1944. Now, in 2023, the plaintiffs are raising a dispute that structure is not a waqf property. The submission of the plaintiff that the property is vested in the name of deity/idol and cannot be converted into a waqf property is a dispute, which is covered under Section 85 of the Act of 1995. The plaintiffs being 'person aggrieved' have to approach the Waqf Tribunal as the jurisdiction of the Civil Court is barred. The same will be governed by the law in present, i.e. the Act of 1995 along with its amendments of 2013, since the suit was filed after the commencement of the said Act. No mixed question of law or fact arises.

159. It is submitted that the judgment of ***Board of Muslim Waqf Vs. Radha Krishan,***1979 SCC (2) 468 is not applicable in the present case as it relates to the Waqf Act, 1954. The words 'any person interested' have been replaced with 'any person aggrieved' in the Act of 1995. The judgment of ***Rashid Wali Beg vs. Farid Pindari & Ors.*** (supra) has interpreted Section 85 of the Act of 1995. The judgment of ***Ramesh Govind Ram vs. Sugra Humayun Mirza Wakf*** (supra) is no more a good law since its basis was removed by the Waqf (Amendment) Act, 2013. The judgment of **UP Sunni Central Waqf Board Vs. Ancient Idol of Swayambhoo Lord Vishweshwar** (supra), is not applicable in the present case. The judgment

of ***Most. Rev. P.M.A. Metropolitan vs. Moran Mar Marthoma*** (supra) is not applicable since only a part of minority judgment is referred and the part of majority judgment has not been referred.

160. It is submitted that as per the provision contained in Order XXIII Rule 3A of the CPC, no suit shall lie, to set aside the decree on the ground that the compromise on which the decree is based was not lawful. If the compromise entered in 1968 is to be set aside, it can only be done by filing an application in the same proceeding seeking a relief of setting aside or modification of the decree. No exception is incorporated in the provisions contained in Order XXIII Rule 3A of the CPC regarding those who are not parties to the compromise being able to maintain a suit to challenge the same. Therefore, the suit is barred under Order XXIII Rule 3A of the CPC.

161. It is submitted that the reliance placed on the judgment of ***Rejeev Gupta*** (supra) is misplaced. The Hon'ble Apex Court in ***Triloki Nath Singh vs Anirudh Singh***, Civil Appeal No. 3961 of 2010, held that a stranger to the compromise cannot challenge the same under Order XXIII Rule 3A of the CPC. Reliance is placed on the following paragraph:-

> *"16. By introducing the amendment to the Civil Procedure Code (Amendment 1976) w.e.f. 1st February, 1977, the legislature has brought into force Rule 3A to order XXIII, which creates bar to institute the suit to set aside the decree on the ground that the compromise on which decree is based was not lawful. The purpose of effecting a compromise between the parties is to put an end to the various disputes pending before the Court of competent jurisdiction once and for all.*
>
> **…… …**

22….Merely because the appellant was not party to the compromise decree in the facts of the present case, will be of no avail to the appellant, much less give him a cause of action to question the validity of the compromise decree passed by the High Court by way of substantive suit before the Civil Court to declare it as fraudulent, illegal and not binding on him. Assuming, he could agitate about the validity of the compromise entered into by the parties to the partition suit, it is only the High Court, who had accepted the compromise and passed decree on that basis, could examine the same and no other court under proviso to Rule 3 of Order 23 CPC."

(Emphasis Supplied)

162. Learned Counsel referred to proviso to Section 34 of Specific Relief Act, 1963 and submitted that so far the relief of possession is concerned, it is claimed for issuance of mandatory injunction against the defendants. The suits are not for recovery of possession under Sections 5 and 6 of the Specific Relief Act, 1963 therefore, the same are barred by proviso to Section 34 of the Specific Relief Act, 1963 and deserve to be rejected as admittedly, the plaintiffs have not claimed 'further relief' as contemplated therein. The relief of injunction cannot be regarded as further relief. Reliance is placed on the judgment of the Hon'ble Apex Court in ***Vasantha Vs. Rajalakshmi*** (supra).

163. It is submitted that the reference given by learned Counsel Mrs. Reena N Singh, on behalf of the plaintiffs to the judgments ***Shyamlal Ranjan Mukherjee vs. Nirmal Ranjan Mukherjee,*** Civil Misc. Writ Petition No. 56447 of 2003, ***Shriomani Gurudwara Prabandhak Committee vs. Somnath Das, Devkinandan vs Murlidhar,*** 1957 AIR 133, ***State of***

Madhya Pradesh vs. Pujari Utthan Avam Kalyan Samiti, CA No. 4850/2021, ***Mukundji Maharaj vs Parshottam Lal Ji,*** AIR 1957 ALL 77, ***K Santhel Kumar vs Principal Secretary to Government,*** W.P. No.18190/ 2021, ***Salim D Agboatwala & Ors. vs Shamalji Oddhavaji Thakkar & Ors.,*** AIR 2021 SC 502, ***Salim Muslim Burial Ground Protection Committee vs Tamil Nadu & Ors***., (supra) and ***Swami Atmanand vs Ram Krishna Tapovanam,*** AIR 2005 SC 2392, is misplaced since the observations made by the Court in each of the aforesaid cases are not applicable to the present case.

164. It is also submitted that so far as the entries in municipal and revenue records are concerned, they are immaterial since revenue records are only for financial purposes to collect the revenue and are not the proof of the title.

Determination:

165. Having heard the learned Counsel for the parties, after perusing the material available on record and the submissions made by both the sides, I now proceed to dispose of the applications moved by the defendants.

(i) Scope of Order VII Rule 11 of the CPC:

166. Mrs. Ahmadi, learned Counsel for the defendants argued that the plaints do not disclose a reliable cause of action. To decide an application under Order VII Rule 11 of the CPC, the averments made in the plaints are to be scrutinized by the Court to arrive at a conclusion that the plaintiffs have a valid cause of action. For this purpose, the plaint is to be read meaningfully and the defense taken by the defendants is not required to be considered. The Court is fully empowered to dismiss the suit summarily at the threshold without conducting a trial, if the Court is satisfied that the plaint is liable to be rejected. The provisions contained in Order VII Rule 11 of the CPC are mandatory in nature. If on a meaningful read-

ing of the plaint, the Court finds that any ground specified in clauses (a) to (e) is made out, the Court is bound to reject the plaint.

167. On the other hand, learned Counsel for the plaintiffs submitted that the power under Order VII Rule 11 of the CPC should be exercised sparingly and cautiously by the Court. The plaint can only be rejected when it appears to the Court that the averments made in the plaint do not disclose a cause of action or are barred by any law. The plaint has to be construed as it stands without any addition or subtraction of words or its apparent grammatical sense. The pleadings in the plaint have to be taken as correct value in its entirety. It is also submitted that the averments made in the plaint have to be read as a whole. On the basis of the averments made in the plaint, in all other situations, the claim should be adjudicated during the course of the trial. When an application for rejection of the plaint is allowed, the plaintiff becomes remediless. Rejection of the plaint at the threshold entails very serious consequence for the plaintiffs, therefore, this power should be exercised in exceptional circumstances only. The facts, which constitute a cause of action, are always subject to the evidence to be led by the plaintiffs during the trial.

168. During their arguments, learned Counsel for the plaintiffs took this Court through historical developments, subsequent rounds of litigations and events leading to cause of action giving rise to present suits.

169. It would be imperative to quote provisions contained in Order VII Rule 11 and Section 151 of the CPC as under:

> ***Order VII Rule 11 – Rejection of Plaint****.—The plaint shall be rejected in the following cases:*
>
> *(a) where it does not disclose a cause of action;*
>
> *(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to cor*

rect the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of Rule 9;

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

Section 151 of the CPC provides:-

151. Saving of inherent powers of Court. — *Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.*

170. A cause of action is a bundle of facts, which the plaintiffs must prove, to succeed in their suits. A cause of action is constituted on the basis of various facts averred in the plaint.

171. It is one of the arguments of the plaintiffs that in the present suits, the title is not under challenge. The area of the property situated in

Katra Keshav Dev, measuring 13.37 acres, is also not under challenge. It is not disputed that the entire property was vested in the Janmabhoomi Trust by late Shri Jugal Kishore Birla. The title of the plaintiffs over the suit property, is established.

172. Perusal of the respective plaints, as a whole, goes to show that the historical background of the matter, averments made in the plaints about the title, ownership and possession of Raja Patnimal of Benaras and his legal heirs over the property of Katra Keshav Dev measuring 13.37 acres, several rounds of subsequent litigations establishing the title and possession of suit property in their favour, the execution of sale deed in favour of Mahamana Pandit Madan Mohan Malviya and others, creation of the Janmabhoomi Trust by Late Sri Jugal Kishore Birla, institution of Suit No.43 of 1967 by Sewa Sansthan, the compromise dated 12.10.1968 entered into between the parties, construction of superstructure known as 'Shahi Idgah Masjid' by the defendants, and execution of certain documents from time to time which are brought on record by plaintiffs, are bundle of facts which indicate that the plaintiffs have a cause of action to institute present suits. All these peculiar facts and circumstances constitute a cause of action as averred in their respective plaints.

173. Pertinent to note that certain documents are filed by the plaintiffs in support of their averments in the plaint such as the sale deed dated 08.02.1944, the trust deed dated 09.03.1951, revenue and municipal records, electricity bills, documents related to several rounds of litigation, notice. The cause of action, averments made in the plaints, as well as the execution of the document are always subject to evidence to be led by the parties during the trial.

174. In **Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educational Trust**, (2012) 8 SCC 706, the Hon'ble Apex Court observed as under:-

> ***"13. While scrutinising the plaint averments, it is the bounden duty of the trial court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words cause of action. A cause of action must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue."***
>
> ***(Emphasis Supplied)***

175. In **A.B.C. Laminart (P) Ltd. v. A.P. Agencies**, (1989) 2 SCC 163, it was observed by the Hon'ble Apex Court:-

> ***"12. A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the de-***

fendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff."

(Emphasis Supplied)

176. In **Srihari Hanumdas Totala v. Hemant Vithal Kamath** (supra), the Hon'ble Apex Court observed that:-

> **"*17.*** *Order 7 Rule 11(d) CPC provides that the plaint shall be rejected "where the suit appears from the statement in the plaint to be barred by any law". Hence, in order to decide whether the suit is barred by any law, it is the statement in the plaint which will have to be construed. The Court while deciding such an application must have due regard only to the statements in the plaint. Whether the suit is barred by any law must be determined from the statements in the plaint and it is not open to decide the issue on the basis of any other material including the written statement in the case.*

177. In ***Popat and Kotecha Property v. State Bank of India Staff Assn.***, (supra), the Hon'ble Apex Court has observed that:-

> ***"10. Clause (d) of Order 7 Rule 7 speaks of suit, as appears from the statement in the plaint to be barred by any law. Disputed questions cannot be decided at the time of considering an application filed under Order 7 Rule 11 CPC. Clause (d) of Rule 11 of Order 7 applies in those cases only where the statement made by the plaintiff in the***

plaint, without any doubt or dispute shows that the suit is barred by any law in force.

1. ***Rule 11 of Order 7 lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word "shall" is used clearly implying thereby that it casts a duty on the court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant. In any event, rejection of the plaint under Rule 11 does not preclude the plaintiffs from presenting a fresh plaint in terms of Rule 13."***

(***Emphasis Supplied***)

178. It is a settled law that the defense of the defendant or the written statement filed on their behalf need not be considered and only the averments made in the plaint are to be considered at the time of the disposal of such application.

179. I am of the considered view that after perusal of the plaints, as a whole and meaningfully, documentary evidence brought on record and oral arguments advanced by the learned Counsel for the parties, *prima facie* it appears that a valid cause of action arose to the plaintiffs to in-

stitue the suits. At this stage, it cannot be assumed that the plaints do not disclose a cause of action as agitated by the learned Counsel for the defendants.

(ii) Bar under the Limitation Act, 1963:

180. Learned Counsel for the defendants vehemently argued that the suits of the plaintiffs are barred under certain provisions of the Limitation Act, 1963. The existence of the mosque constructed by Aurangzeb is an admission on the part of the plaintiffs since 1669-70 as averred in the plaint. Ever since, the property is being utilized as a Mosque and *Namaz* is being offered regularly. It is also contended that pursuant to the compromise dated 12.10.1968, certain visible physical changes were carried out at the spot which were well within the knowledge of the plaintiffs. Therefore, the cause of action, if any, had arisen between 1968 to 1974. It is also asserted that these physical developments could not have been hidden from the plaintiffs. The plaintiffs cannot claim ignorance about the compromise which they could have known by exercise of reasonable diligence. The relief seeking declaration that the decree dated 20.07.1973 and 07.11.1974 be not binding upon the plaintiffs for certain alleged reasons is also hit by the Limitation Act,1963. Articles 58 and 59 of the Limitation Act, 1963 provide period of limitation as three years to obtain any declaration and to cancel or set aside an instrument or decree or for the rescission of a contract. Whereas, present suits are instituted by the plaintiffs after a span of more than 50 years.

181. It is also contended that the averments made in the plaints disclose an illusory cause of action, created by the plaintiffs. The plaint is cleverly drafted. It is averred by the plaintiffs that on a particular date, they visited the property for *darshan* of Lord Shree Krishna at Mathura. They were shocked to see that a mosque was standing there. They requested the members of the Committee to remove the construction over temple land.

They were shown the copy of compromise dated 12.10.1968. The defendants refused to remove the construction. The chain of events, as pleaded in the plaints, amounts to creation of an illusory cause of action. Further, no cogent evidence has been brought on record to support such illusory cause of action.

182. Learned Counsel for the plaintiffs refuted the arguments advanced by the learned Counsel for the defendant and submitted that they came to know about superstructure for the first time, when they visited Mathura for *darshan* of Lord Shree Krishna. It was only then that they came to know for the first time about the alleged illegal and fraudulent compromise dated 12.10.1968. The Waqf Board had illegally accorded permission to the Committee to enter into fraudulent and *void ab initio* compromise. The plaintiffs sent a notice under Section 89 of the Act of 1995, which was duly served upon them. It is also submitted that continuing wrong and cause of action is accruing everyday against the wrongs committed by the defendants. Therefore, the period of limitation would begin from the date of knowledge about the facts mentioned above.

183. The relevant provisions contained in Articles 58 and 59 of the Limitation Act, 1963 are extracted as under:-

"*Part III – Suits relating to declarations.*

58	*To obtain any other declaration*	*Three years*	*When the right to sue* ***first accrues***

Part IV- Suits relating to decrees and instruments.

59.	*To cancel or set aside an instrument or decree or for the rescission of a contract.*	*Three years*	*When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded*

			first become known to him.”

184. Based on the pleadings averred in the respective plaints, it appears that the plaintiffs came to know for the first time about the existence of the superstructure constructed by the defendants at the property of Katra Keshav Dev when they visited Mathura for *darshan* of Lord Shree Krishna on the given date as mentioned in the clause of the cause of action in their respective plaints. It was only then, they came to know about the alleged and fraudulent compromise dated 12.10.1968. Thereafter, they requested the defendants to remove the superstructure, but the defendants refused to do so. The refusal by the defendants to remove the superstructure is also one of the facts relating to the accrual of cause of action to the plaintiffs.

185. The compromise dated 12.10.1968 is also challenged by the plaintiffs, *inter alia,* on the grounds that Sewa Sansthan had no authority to file Suit No.43 of 1967. It misrepresented itself to be the owner and in possession over the property of Katra Keshav Dev. Perusal of the plaint of Suit No. 43 of 1967 (*Shree Krishna Janamsthan Seva Sangh, Mathura also known as Shree Krishna Janambhumi Trust Mathura and ors. v. Trust Masjid Idgah under the alleged Committee of Management and ors.*) goes to show that Sewa Sansthan misrepresented the fact and averred that the Janmabhoomi Trust was registered as ***Shri Krishna Janamsthan Sewa Sangh*** and the entire property of Katra Keshav Dev was endowed to the said trust.

186. It is also averred by the plaintiffs of the present suit, that the suit property, which was dedicated to the Janmabhoomi Trust, was never vested or transferred to Sewa Sansthan after the Janmabhoomi Trust became defunct in 1958. The Janmabhoomi Trust was always in existence and the property of Katra Keshav Dev always remained to be vested in it.

Sewa Sansthan had no authority to concede the land vested in the deity to the defendants pursuant to the alleged illegal, fraudulent and *void ab initio* compromise.

187. A plain reading of the plaint of Suit No.43 of 1967 supports the arguments of the learned Counsel for the plaintiffs. The suit was titled as ***Shri Krishna Janamasthan Sewa Sangh, Mathura also known as Shri Krishna Janambhumi Trust, Mathura v. Trust Masjid Idgah and Ors.*** It would be imperative to reproduce the relevant paragraphs of the plaint of Suit No. 43 of 1967, which read thus:

> "1. ***That the plaintiff is the owner and Zamindar and in possession of entire Khewat No. 255 present, which is Khewat No. 291 old, present area 13.37 acre known as Katra Keshavdeo*** *situated in Mauza Mathura Bangar which was included in Nagla Mallpura.*
>
> *... ... ...*
>
> *4. That Seth Jugal Kishore Birla* ***created a Trust known as Shri Krishna Janambhumi Trust which has been registered under Act XXI of 1860 in the name of Shri KRISHNA JANAMSTHAN SEWA SANGH*** *and the names of President and other office holders and members of the Sangh are given above along with the name of the Plaintiff and the* ***said Seth Jugal Kishore Birla endowed the entire rights and interests in the aforesaid property by the Trust Deed dated 21.2.1951 to the Plaintiff.****"*

188. Copy of the trust deed dated 21.02.1951, by which the Janmabhoomi Trust was created, is also brought on record by the plaintiffs. Perusal of this document reveals that the trust was created in the name of '***Shree Krishna Janmabhoomi Trust***' and not as '***Shri Krishna Janamsthan Sewa Sangh'***. The description of the property of Katra Keshav Dev endowed to the Janmabhoomi Trust is referred in the trust deed as:

> ***"3. इस ट्रस्ट की संपत्ति कटरा केशव देव अथवा श्री कृष्ण जन्मभूमि होगी। जिसका क्षेत्रफल 13.37 एकड़ है, जो मथुरा के पश्चिमी भाग में स्थित है, जिसके पूर्व बॉम्बे वडोदरा सेंट्रल इंडिया रेलवे लाइन, पश्चिम केशव देव नाम का वर्तमान मंदिर, उत्तर नजूल जमीन और दक्षिण उफतादा जमीन व कच्चा रास्ता है।"***
>
> ***"3. The property of this trust will be Katra Keshav Dev or Shree Krishna's birthplace, whose area is 13.37 acres, which is situated in the western part of Mathura, east of which is Bombay Vadodara Central India Railway Line, west is the existing temple named Keshav Dev, north is Nazool land and south is Uftada land and kutcha road."***

189. The aforesaid recital about the name of the trust and description of the property of Katra Keshav Dev clearly shows that Suit No. 43 of 1967 was filed by concealing the true facts by its plaintiffs. Sewa Sansthan was not the owner and was not in possession of the property of Katra Keshav Dev. It misrepresented itself as the owner and Zamindar and in possession of entire area of 13.37 acres land known as Katra Keshav Dev. Further the property was endowed to the Janmabhoomi Trust and not to Sewa Sansthan by the trust deed dated 09.03.1951. The property endowed to the

Janmabhoomi Trust was mentioned in the trust deed by metes and bounds.

190. Conclusively, Suit No. 43 of 1967 was not filed by its plaintiffs by disclosing their true identity and their status *qua* the property. Since the property of Katra Keshav Dev was endowed to the Janmabhoomi Trust and it was never transferred or vested in Sewa Sansthan, therefore, the plaintiffs in the said suit had no right or authority, either to file the suit or to enter into the compromise dated 12.10.1968 and to concede two bighas land of the temple to the defendants.

191. In the case in hand, the question of limitation is directly related to the cause of action. The cause of action, being the mixed question of fact and law, as averred in the plaints can only fuller and finally be examined on the basis of the evidence led by the parties during the trial.

192. In the case of **Thankamma George vs Lilly Thomas and Another,** 2024 SCC OnLine SC 1673, the Hon'ble Apex Court has observed that:-

> ***"15.1*** *The words "when the right to sue first accrues" have been interpreted and held by this Court in Smt. Neelam Kumari v. U.P. Financial Corporation. The starting point for the limitation in the case of setting aside sale deeds has two limbs: the date of execution and the date of knowledge. There is no difficulty in applying the period of limitation expiring three years from the date of execution, provided that the Appellant had knowledge of Ex. A-5 on the date of registration and the right to sue first accrued...."*

193. In **Saranpal Kaur Anand v. Praduman Singh Chandhok,** (2022) 8 SCC 401, the Hon'ble Apex Court held that:-

> *"... ... ...14.* ***The word "diligence" read with the word "reasonable" in the context of Section 17(1) of the Limitation Act is subjective and relative****, and would depend upon circumstances of which the actor called upon to act reasonably, knows or* ***ought to know.*** *Vague clues or hints may not matter. Whether the plaintiff/applicant had the means to know the fraud is a relevant consideration. It is manifest that Section 17(1) of the Limitation Act does not protect a party at fault for failure to exercise reasonable diligence when the circumstances demand such exercise and on exercise of which the plaintiff/applicant could have discovered the fraud. When the time starts ticking subsequent events will not stop the limitation. The time starts running from the date of knowledge of the fraud/mistake; or the plaintiff/applicant when required to exercise reasonable diligence could have first known or discovered the fraud or mistake. In case of a concealed document, the period of limitation will begin to run when the plaintiff/applicant had the means of producing the concealed document or compelling its production."*
>
> ***(Emphasis Supplied)***

194. The plea of limitation can be decided based on the pleadings of the parties after framing an issue under Order VI Rule 13 of the CPC. On the basis of the chain of events as averred in the plaints, at this stage, when the maintainability of the suit is challenged by the defendants, the question of limitation cannot be determined without framing an issue and taking the evidence of the parties. Since the question of limitation is a mixed

question of fact and law, therefore, on the question of limitation, the plaints cannot be rejected at the threshold.

195. In view of the foregoing discussions, I am of the considered opinion that the suits of the plaintiffs are not barred under any provisions of Limitation Act, 1963.

(iii) Bar under Order XXIII Rule 3A of the CPC:

196. It is submitted on behalf of the defendants that insofar as the bar under Order XXIII Rule 3A of the CPC is concerned, Suit No. 43 of 1967 was filed in 1967. The compromise was entered on 12.10.1968. The title and the possession of Shahi Masjid Idgah were settled on the basis of the terms of such compromise. Therefore, challenge to the compromise can be made in the same proceedings and not by filing present suits. The provisions contained under Order XXIII Rule 3A of the CPC imposes an express bar to such proceedings.

197. Per contra, learned Counsel for the plaintiffs have submitted that the deity/idol/Asthan was not impleaded as party either to Suit No.43 of 1967 or in the compromise dated 12.10.1968. Since the diety is a perpetual minor, no permission from a competent Court was obtained to file Suit no.43 of 1967, as the next friend of the deity or to enter into the compromise dated 12.10.1968. The Court is always a custodian of the interest and welfare of the deity. The entire proceedings of Suit No. 43 of 1967 and the construction raised pursuant to the compromise dated 12.10.1968 are based on fraud and misrepresentation and, therefore, they are illegal and *void ab initio*. The plaintiffs have also claimed the relief to declare the judgment and decree dated 20.07.1973, and judgment and decree dated 07.11.1974 passed in Civil Suit No.43 of 1967, to be not binding on the plaintiffs.

198. Order XXIII Rule 3A of the CPC provides thus:

> *"**3A. Bar to suit.** - No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful."*

199. Perusal of the trust deed dated 09.03.1951, created by Late Shri Jugal Kishore Birla in the name of the Janmabhoomi Trust reveals that the entire property of Katra Keshav Dev, measuring 13.37 acres, was dedicated and vested in the Janmabhoomi Trust. One of the objectives to create Janmabhoomi Trust was to construct a glorious temple of Lord Shree Krishna at his birthplace. Suit No.43 of 1967 was filed subsequent to the creation of the Janmabhoomi Trust. Similarly, perusal of the copy of the plaint relating to Suit No. 43 of 1967 as well as the compromise deed dated 12.10.1968 demonstrates that the Janmabhoomi Trust and deity/ idol were not arrayed as parties to the suit. To represent and to protect the interest of the idol, being a perpetual minor, no *shebait* or next friend was appointed by the Court. It is not disputed that the deity is a perpetual minor. The Court is always a custodian of the rights and the interest of a perpetual minor. Sewa Sansthan is a distinct legal entity from the Janmabhoomi Trust. No documentary evidence is brought on record, which may indicate that the property of the Janmabhoomi Trust was transferred, dedicated, or vested to Sewa Sansthan.

200. The provisions of Order XXIII Rule 3A of the CPC would apply where the decree is challenged by any of the parties already arrayed in the suit. Had the compromise dated 12.10.1968 been challenged by the parties to Suit No.43 of 1967, the subsequent suit brought by the parties to that suit would have been barred by the provisions under Order XXIII Rule 3A of the CPC.

201. In **Srimati Suraj Kumari Vs. District Judge Mirzapur and others** (supra), this Court observed that:-

> *"**The provision is confined only to the parties to the suit. The said provision is not applicable to a stranger to the said compromise decree. A suit by stranger to set aside the compromise decree, which affects his right is not barred by the said provision. Order XXIII Rule 3A of the Code cannot be read de horse its earlier provision of the same chapter**……..Order XXIII Rule 3 & Rule 3A of the Code added by amending Act No. 104 of 1976 read together, makes it clear that a party to the suit is debarred from filing suit for setting aside compromise decree on the ground of being unlawful. **Such a party has remedy by moving appropriate application before the court concerned which is passed the compromise decree.**"*
>
> ***(Emphasis Supplied)***

202. Since the plaintiffs are strangers to the proceedings in Suit No.43 of 1967, therefore, the express bar imposed under the provisions of Order XXIII Rule 3A of the CPC does not apply. Hence, I am of the view that the suits of the plaintiffs are not barred by the provisions contained under Order XXIII Rule 3A of the CPC.

(iv) Bar under the Places of Worship (Special Provisions) Act, 1991:

203. Mrs. Tasneem Ahmadi, learned Counsel for the defendants, submitted that the suits of the plaintiffs are barred under Sections 3, 4, 6 and 7 of the Act of 1991. As per the averments made in the respective plaints, it is an admission that Shahi Idgah Mosque was constructed by Aurangzeb in 1669-70 and it is existing since then. The property continues to be utilized as a mosque even today. The suit property was a mosque on the date of compromise as per the terms therein. Even under Notification No.

1465/1133M dated 25.11.1920 issued by Lieutenant Governor, United Province and Notification No.1669-M1133 dated 27.12.1920, the existence of mosque was recognized. It is noted in the aforesaid notification dated 25.11.1920 that the site is utilized for the mosque of Aurangzeb. Thus, the religious character of the property is evident to be a mosque on the basis of the aforesaid notification as well as the admission of the plaintiffs in their plaints. The religious character is to be determined on the basis of nomenclature of the place of worship. The possession and utilization of the property as mosque by Muslims indicate the religious character of the suit property. Therefore, no mixed question of fact and law is involved.

204. It is also submitted that the relief claimed by the plaintiffs, *inter alia*, seeking removal of the Shahi Idgah Mosque and handing over the vacant possession to the Janmabhoomi Trust amounts to conversion of a religious place for offering prayers by the Muslim community to one for offering prayer by the Hindu devotees.

205. Per contra, learned Counsel for the plaintiffs averred that the temple of Lord Shree Krishna was in existence since 5000 years. Regular *puja, aarti* and other religious rituals are being performed there. The religious character of the property was always a temple. '***Once a temple always a temple***' is a judicially recognized principle of law. Mere demolition of the temple by intruders from time to time and raising constructions over the property as a mosque does not change the religious character of the property. Unlawful possession of the defendant over the property can never be treated to be an admission.

206. It is also submitted that the religious character is not defined in the Act of 1991. The determination of the religious character of the suit property shall be proved on the basis of oral, documentary, scientific and experts' evidence to be led during the trial. The birthplace of Lord Shree

Krishna lies beneath the present structure. Every inch of the land of Katra Keshav Dev is devoted to Lord Shree Krishna and the Hindu community. Historical background and subsequent developments about the suit property are reiterated.

207. It is also submitted that near the eastern side of the superstructure, an old well which is called as '*Krishna Koop*' is existing since time immemorial. This place is visited by the Hindu devotees to perform *Mundan* ceremony of their children. *Puja, aarti* and other religious rituals are also being performed by them. After the festival of Holi*, 'Basoda puja'* at '*Krishna Koop*' is performed every year.

208. It is also submitted that the provisions of the Act of 1991 are not applicable to any place of worship, which is an ancient and historical monument or an archaeological site or remains covered by the Act of 1958. Section 3 of the Act of 1904 provides that the Central Government, by notification in the official gazette, may declare an ancient monument to be a protected monument. In Notification No. 1465/1133-M, dated 25.11.1920, Lt. Governor, United Province, Agra and Oudh declared the place of the temple at Katra Keshav as a 'protected monument'.

209. The aforesaid notification reads thus:

> "*In exercise of the powers conferred by Section 3, sub-section (1) of the Ancient Monuments Preservation Act (VII of 1904), his Honour the Lieutenant-Governor of the United Province of Agra and Oudh is hereby pleased to declare the Under mentioned ancient Monument to be protected monuments within the meaning of the Act and to direct that no one shall destroy, remove, alter or efface in any manner or build on or near the site of monu-*

ments without having first obtained permission from the Government or its authorized officers.

2. Any objection to the above proposal received in writing by the Local Government within one month from the date of this notification will be taken into consideration.

Sr. No	*Name and description of monument*	*District*	*Locality*
37.	*The portion of Katra mound which are not in the position of nazul tenants on which formerly stood a temple of Keshav Deva which was dismantled and the site was utilized for the mosque of Aurangzeb.*	*Muttra*	*Kosi on Muttra and Bharatpur road, 9 miles from Muttra.*

210. Thus, Notification dated 25.11.1920, demarcated the portion of Katra mound as protected monument. It is worthwhile to note that the said notification records that the temple of Keshav Dev existed there and was dismantled to be utilized as a mosque of Aurangzeb. Further, Notification No.1669/1133-M dated 27.12.1920, issued by Lt. Governor, United Province under Section 3(3) of the Act of 1904, declared this area to be 'protected monument of national importance'.

211. The preamble of the Act of 1991, reads thus:

"*An Act to prohibit conversion of any place of worship and to provide for the maintenance of the religious character of any place worship as it existed on the 15th Day of August, 1947, and for matters connected therewith or incidental thereto"*.

212. Sections 3, 4, 6 and 7 of the Act of 1991 provide thus:

"***3. Bar of conversion of places of worship.*** *No person shall convert any place of worship of any religious denomination or any section thereof into a place of worship of a different section of the same religious denomination or of a different religious denomination or any section thereof.*

4. Declaration as to the religious character of certain places of worship and bar of jurisdiction of courts, etc.

(1) It is hereby declared that the religious character of a place of worship existing on the 15th day of August, 1947 shall continue to be the same as existed on that day.

(2) If, on the commencement of this Act, any suit, appeal or other proceeding with respect to the conversion of the religious character of any place of worship, existing on the 15th day of August, 1947, is pending before any court, tribunal or other authority, the same shall abate, and no suit, appeal or other proceeding with respect to any such matter shall lie on or after such commence-

ment in any court, tribunal or other authority: Provided that if any suit, appeal or other proceeding, instituted or filed on the ground that conversion has taken place in the religious character of any such place after the 15th day of August, 1947, is pending on the commencement of this Act, such suit, appeal or other proceeding shall be disposed of in accordance with the provisions of sub-section (1).

(3) Nothing contained in sub-section (1) and sub-section (2) shall apply to,

> *(a) any place of worship referred to in the said sub- sections which is an ancient and historical monument or an archaeological site or remains covered by the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958.) or any other law for the time being in force;*
>
> *(b) any suit, appeal or other proceeding, with respect to any matter referred to in sub-section (2), finally decided, settled or disposed of by a court, tribunal or other authority before the commencement of this Act;*
>
> *(c) any dispute with respect to any such matter settled by the parties amongst themselves before such commencement;*

(d) any conversion of any such place effected before such commencement by acquiescence;

(e) any conversion of any such place effected before such commencement which is not liable to be challenged in any court, tribunal or other authority being barred by limitation under any law for the time being in force.

6. Punishment for contravention of section 3.

6. (1) Punishment for contravention of section 3. Whoever contravenes the provisions of section 3 shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

(2) Whoever attempts to commit any offence punishable under sub- section (1) or to cause such offence to be committed and in such attempt does any act towards the commission of the offence shall be punishable with the punishment provided for the offence.

(3) Whoever abets, or is a party to a criminal conspiracy to commit, an offence punishable under sub-section (1) shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in section 116 of the Indian Penal Code, (45 of 1860.) be punishable with the punishment provided for the offence.

7. Act to override other enactments. *The provisions of this Act shall have effect notwithstanding*

anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any law other than this Act."

213. Section 2(b) of the Act of 1991 defines 'conversion' as :-

(b) "conversion", with its grammatical variations, includes alteration or change of whatever nature;

214. Section 3 of the Act of 1991 bars conversion of the place of worship of any religious denomination or any section thereof into a place of worship of a different section of the same religious denomination or of a different religious denomination or any section thereof.

215. Section 4 provides declaration as to the religious character of certain places of worship which existed on 15th day of August, 1947 and bars jurisdiction of the Court.

216. Section 2(c) of the Act of 1991 defines the phrase 'place of worship' to mean a Temple, Mosque, Gurudwara, Church, Monastery or any other place of public religious worship of any religious denomination or any section thereof, by whatever name called.

217. The Act of 1991 does not define 'religious character'. To attract the provisions of this Act, the 'religious character of the place of worship' has to be determined. This Act does not bar determination of question of fact as to the religious character of a particular place of worship by the Court. The religious character of the place of worship is the determinative factor for deciding the applicability of the provisions of the Act of 1991 over a property.

218. The averments made in the plaint as well as the documents filed on behalf of the plaintiffs in support of their plaints can also be a determinative factor to decide the religious character of the property. The sale deed

dated 08.02.1944, executed by Rai Krishna Das and Rai Anand Krishna in favour of Mahamana Pt. Madan Mohan Malviya and others and, the trust deed dated 09.03.1951, creating a trust in the name of Shree Krishna Janmbhoomi Trust by late Jugal Kishore Birla to construct a lofty temple over the property can be taken into consideration during the trial to determine the religious character of the suit property. The documents relating to Suit No. 43 of 1967, the compromise dated 12.10.1968 entered into between the parties in the aforesaid suit, entry in revenue records, facts relating to historical backgrounds as referred to hereinbefore, certain notifications, information obtained through RTI by the plaintiffs, entries in the records of Municipal Corporation of Mathura and Vrindavan are brought on record by the plaintiffs in their respective suits. All these documents are related to the suit property and are in support of the subsequent developments which had taken place from time to time. These documentary evidence can be taken into consideration for determination of the religious character of the property and are subject to evidence led by the parties during the trial.

219. Besides this, excerpts from the historical books, as referred to by the plaintiffs in their plaints, historical essays authored by Sri Jadunath Sarkar, '*Anecdotes of Aurangzeb'* and description made by the scribe of Aurangzeb named Saqi Mustad Khan in his book "*Massir-i-Alamgiri",* seem to be significant literature, which can also be a determinative factor about the religious character of the property.

220. The religious character of the property can only be determined on the basis of the facts and circumstances of the case and on the basis of the evidence to be led by the parties during the trial. There is a rival claim of the parties about the nature and use of the suit property. The defendants claim it to be a mosque, while the plaintiffs claim that since time immemorial, the property has been worshipped as a temple of Lord Shree Krishna.

221. In the present proceedings, the question of religious character is a mixed question of facts and law. This Court is of the opinion that the religious character of the suit property cannot be determined, at this stage. It can only be decided by framing issues on the basis of the pleadings of the parties and after taking oral and documentary evidence to be led during the trial.

222. So far as the arguments of the learned Counsel for the defendants are concerned, it is an admission by the plaintiffs that the suit property is a mosque constructed by Aurangzeb in 1669-70, which is utilized as a mosque ever since and that there is an admission of possession of the defendants over the suit property, the averments made in the respective plaints by the plaintiffs shall also be taken into consideration for determination of the religious character of the suit property.

223. It is averred by the plaintiffs that Shri Brajnabha, the great grandson of Lord Shree Krishna constructed the first temple of Lord Shree Krishna at the Janamasthan about 5000 years ago. Thereafter, it was rebuilt, renovated, demolished from time to time, but the religious character of the property remained as temple. The Hindu devotees continued to offer worship and prayer since then. The historical background and subsequent developments, including several rounds of litigation, which ended in favour of Hindu devotees, holding their title and possession, creation of the Janmabhoomi Trust, performing '*Basoda Puja'* at the '*Krishna Koop'* to the eastern side of the superstructure, assembly of millions of Hindu devotees everyday to offer prayer and *aarti* and other religious activities carried out at the birthplace of Lord Shree Krishna, treating it as *Garbh Grah*, *prima facie*, indicate about the religious character of the property as a Hindu temple.

224. Section 4(3)(a) of Act of 1991 expressly bars the applicability of the provision of sub-Section (1) and (2) of Section 4, to any place of worship, which is an ancient and historical monument or an archaeological

site or remains covered by the Act of 1958 or any other law for the time being in force.

225. Notification No.1465/1133 under the Act of 1904 is brought on record by the plaintiffs. Vide this notification, the portion of Katra mound on which, formerly stood a temple of Keshav Dev which was dismantled and the site is utilized for the mosque of Aurangzeb is declared as ancient monument to be a protected monument. It was further notified that no one shall destroy, remove, alter, or efface, in any manner, or build near the site of monument without any permission obtained from the Government or its Authorized Officer.

226. *Prima facie*, this notification indicates that in 1920, the property which was an ancient monument was declared to be a protected monument. During the arguments, a list of monuments of national importance of Uttar Pradesh was also brought on record. Serial no.219 of such list referrs to "*the portion of Katra mound, which are not in the possession of Nazul tenants on which, formerly stood a temple of Keshav Dev which was dismantled and the site utilized for the mosque of Aurangzeb"*. Therefore, the bar imposed under section 4(3)(a) of the Act of 1991 for non-applicability of the provisions of the Act, appears to be squarely applicable to the suit property.

227. The above notification indicates the existence of a temple of Keshav Dev prior to its demolition. After the demolition, the site was utilized as the mosque of Aurangzeb. The demolition of the temple of Lord Shree Krishna, during the regime of Aurangzeb, is pleaded by the plaintiffs. It is also to be noted that the defendants did not say anything about the existence of mosque prior to 1669-70, whereas it is the case of the plaintiffs that Sri Brijnabha, the great grandson of Lord Shree Krishna constructed a magnificent temple at the site of Katra Keshav Dev 5000 years ago. Further, the trust deed dated 9.3.1951 clearly corroborates the existence of the temple of Lord Shree Krishna on the property at the time of the creation of the Janmabhoomi Trust.

228. This Court finds substance in the argument of the plaintiffs that the principle of 'first in existence' or 'prior in existence' is the determinative factor for deciding the applicability of the provisions of the Act of 1991. The arguments of learned Senior Counsel, Sri C. S. Vaidyanathan, that ***'once a temple, always a temple'*** is a judicially recognized principle of law and learned Counsel, Sri Satyaveer Singh, that ***'resolution always stays alive' (***संकल्प हमेशा जिंदा रहता है**,** और यह कभी मरता नहीं है**)** are also indicative of the religious character of the property as temple.

229. In **U.P. Sunni Central Waqf Board Vs. Ancient Idol of Swayambhoo Lord Vishweshwar**, (supra), a Coordinate Bench of this Court observed about the applicability of the Act of 1991, to a place of worship. The relevant paragraphs are extracted here as under:

> ***161.*** *Another point canvassed by plaintiffs' counsel to the non-applicability of Section 3, 4 (1) and 4 (2) is on the basis of non obstante clause contained in Sub-Section (3) of Section 4, that Section 4 (1) and 4(2) will not apply to any conversion of place effected before such commencement by acquiescence. The bar contained in Section 3, 4 (1) and 4 (2) is negatived by Sub-Section (3) (d) of Section 4, as the forcible act of Mughal Emperor in demolishing part of temple, and thereafter raising illegal construction would not affect the maintainability of suit.*
>
> ***162.*** *The Act of 1991 is not an absolute bar upon the parties approaching the courts after its enforcement seeking their right as to place of worship or defining religious character of any place of worship. Sub-Section (3) of Section 4 enumerates certain cases in which the parties can approach the*

court for redressal of their grievance. Sub-Section (3)(d) is one of those case, where conversion has taken place much before the commencement of the Act and a party had not approached the court, the acquiescence or silence would not bar the action of such party.

163. *As "religious character" has not been defined under the Act, and the place cannot have dual religious character at the same time, one of a temple or of a mosque, which are adverse to each other. Either the place is a temple or a mosque.*

... ...

167. *Thus, I find that religious character of the disputed place as it existed on 15.08.1947 is to be determined by documentary as well as oral evidence led by both the parties. Unless and until the court adjudicates, the disputed place of worship cannot be called as a temple or mosque.*

... ...

184*. The Act does not define "religious character", and only "conversion" and "place of worship" have been defined under the Act. What will be the religious character of the disputed place can only be arrived by the competent Court after the evidences are led by the parties to the suit. It is a disputed question of fact, as only part and partial relief has been claimed of entire Gyanvapi*

compound which comprises of settlement plot Nos.9130, 9131 and 9132.

***185**. Either the Gyanvapi Compound has a Hindu religious character or a Muslim religious character. It can't have dual character at the same time. The religious character has to be ascertained by the Court considering pleadings of the parties, and evidences led in support of pleadings. No conclusion can be reached on the basis of framing of preliminary issue of law. The Act only bars conversion of place of worship, but it does not define or lays down any procedure for determining the religious character of place of worship that existed on 15.08.1947."*

230. Refuting the arguments made on behalf of the defendants that the Act of 1904 was repealed by Section 39 of the Act of 1958, Sri Hari Shanker Jain, learned Counsel submitted that the Act of 1904 was never repealed in view of the provision contained in Section 39(2) of the Act of 1958, which reads thus:

"The Ancient Monuments Preservation Act, 1904, shall cease to have effect in relation to ancient and historical monuments and archaeological sites and remains declared by or under this Act to be of national importance, ***except as respect to things done or omitted to be done before the commencement of this Act****."*

(Emphasis supplied)

231. The Court also find sybstance in the argument that the provisions contained in Section 39(2) of the Act of 1958 and entries made in Seventh

Schedule of the Constitution of India are important aspects to be considered as one of the factors with regard to non-applicability of the provisions of the Act of 1991 over the suit property at this stage.

232. In view of the above discussion, this Court is of the opinion that under the facts and circumstances of the case, the determination of the religious character of the suit property is a mixed question of fact and law. The religious character of the property has to be determined after framing of the issues on the basis of the pleadings of the parties,and after taking documentary and oral evidence to be led by the parties during the trial.

233. This Court is also of the opinion that on the basis of the averments made in the plaints and the documents brought on record and further considering the arguments advanced on behalf of the rival parties, at this stage, the suits of the plaintiffs do not appear to be barred under any provision of the Act of 1991.

(v) Bar under the Waqf Act, 1995:

234. Learned Counsel for the defendants advanced her arguments in two folds. Firstly, the suit property is a waqf property and secondly, being the waqf property, the suits of the plaintiffs are barred under Sections 6, 85 and 108-A of the Act of 1995.

235. During the arguments, learned Counsel filed the copy of Supplement to the Government Gazette Notification dated 26.02.1944, Part VIII, issued by the Secretary, Sunni Central Board of Waqfs, United Provinces, Lucknow. This notification contains list of Sunni Waqf, to which according to the report of the Commissioner of Waqf, the provision of U.P. Muslim Waqfs Act XIII of 1936 applies. The relevant entry from such list is reproduced hereunder:-

Sr. No.	***Name of Waqif***	***Name Present Waqf Mutavalli***	***Nature of Waqf property***
43	*Eidgah Masjid Aalmgiri*	*Abdulla Khan & Fathe Nusrat & Salimulla etc.Deeg Darwaja Dist. Mathura*	*Eidgah & Masjid etc.*

236. On the basis of the aforesaid notification, the learned Counsel vehemently argued that the suit property was notified by the United Province on 26.02.1944 as a waqf property. Names of Mutawalli Abdulla Khan, Fathe Nusrat, Salimulla etc. are mentioned therein. This notification deals with the suit property.

237. It is further contended that according to the provision contained in Section 85 of the Act of 1995, the jurisdiction of the Civil Court, Revenue Court and any other authority in respect of any disputed question or other matter relating to any waqf, waqf property or other matter shall be determined by the Waqf Tribunal. Section 108-A of the Act of 1995, overrides any other law for the time being in force. To bolster her arguments learned Counsel referred to paragraphs no. 42, 45 and 47 of the decision of the Hon'ble Apex Court in **Rashid Wali Beg vs. Farid Pindari** (supra).

238. Per contra, learned Counsel for the plaintiffs rebutted the claim and submitted on behalf of the plaintiffs that the suit property is not a waqf property. The Waqf Tribunal cannot decide a question relating to the nature of the property. Since the suit property is a temple of Lord Shree Krishna since time immemorial, the character of the deity as perpetual minor and its consequence can only be decided by this Court. The above referred notification does not contain any specification of the property such as its area, survey number, description, boundaries, identification etc. It is also submitted that the suit property was never known as *'Idgah Masjid Aalmgiri'* and therefore, this notification does not deal with the suit property. All these questions require leading and appreciation of evidence and this issue cannot be decided at this stage.

239. It is also argued on behalf of the plaintiffs that the suit property was never dedicated to 'Aukaf'. Neither a notice was issued nor any inquiry was conducted with the owner of the property, i.e. the deity. Since, no survey was conducted, therefore, no report of such survey was available. The

property was always a temple, therefore, it could not be dedicated or vested in a waqf. The temple of Lord Shree Krishna, existing on the land of Katra Keshav Dev, was illegally and forcibly demolished and encroached upon, under the orders of Aurangzeb. Subsequently, a mosque was constructed over the land of the temple. Under these circumstances, the suit property cannot be notified as a waqf property by the above notification. Mandatory compliance with Sections 4, 5 & 6 of the Act of 1995 was not made to constitute a valid waqf. The averments made in the plaint also indicate that suit property was always a place of worship for the Hindu devotees. No entry as '*Shahi Masjid Idgah*' was made in the revenue or in municipal records.

240. It is further contended that this notification cannot be considered to be a conclusive proof to demonstrate that the suit property was notified as a waqf property. Particulars of the waqf are not disclosed. The State Government never issued any notification on the basis of the report of the Waqf Board. The U.P. Muslim Act, 1936 was repealed by the U.P. Muslim Waqfs Act, 1960 which was thereafter, repealed by the U.P. (Second) Repealing Act, 2021. Therefore, the waqf list of 1944 is *non-est.* Whether a property is a waqf property or not, it cannot be decided at this stage without taking the evidence of the parties.

241. The definition of 'Waqf' is provided under Section 3(r) of the Act of 1995**.** Relevant provisions of the Act of 1995 are extracted hereunder:-

> *3(r)* ***'Waqf'*** *means the permanent dedication by any person, of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes—*
> *(i) a waqf by user but such waqf shall not cease to be a waqf by reason only of the user having ceased irrespective of the period of such cesser;*

(ii) a Shamlat Patti, Shamlat Deh, JumlaMalkkan or by any other name entered in a revenue record;

(iii) "grants", including mashrat-ul-khidmat for any purpose recognised by the Muslim law as pious, religious or charitable; and

(iv) a waqf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable, provided when the line of succession fails, the income of the waqf shall be spent for education, development, welfare and such other purposes as recognised by Muslim law,

and "waqif" means any person making such dedication;

242. Sections 4 and 5 of the Act of 1995, lay down the procedure for construction of a Waqf. which read thus :-

4. Preliminary survey of auqaf.—

(1) The State Government may, by notification in the Official Gazette, appoint for the State a Survey Commissioner of Auqaf and as many Additional or Assistant Survey Commissioners of Auqaf as may be necessary for the purpose of making a survey ofauqaf in the State.

(1A) Every State Government shall maintain a list of auqaf referred to in sub-section (1) and the survey of auqaf shall be completed within a period of one year from the date of commencement of the Wakf (Amendment) Act, 2013 (27 of 2013), in case such survey was not done before the commencement of the Wakf (Amendment) Act, 2013:

Provided that where no Survey Commissioner of Waqf has been appointed, a Survey Commissioner for auqaf shall be appointed within three months from the date of such commencement.

(2) All Additional and Assistant Survey Commissioner of Auqaf shall perform their functions under this Act under the general supervision and control of the Survey Commissioner of Auqaf.

(3) The Survey Commissioner shall, after making such inquiry as he may consider necessary, submit his report, in respect of auqaf existing at the date of the commencement of this Act in the State or any part thereof, to the State Government containing the following particulars, namely:—

(a) the number ofauqaf in the State showing the Shia auqaf and Sunniauqafseparately;

(b) the nature and objects of each waqf;

(c) the gross income of the property comprised in each waqf;

(d) the amount of land revenue, cesses, rates and taxes payable in respect of each waqf;

(e) the expenses incurred in the realisation of the income and the pay or other remuneration of the mutawalli of each waqf; and

(f) such other particulars relating to each waqf as may be prescribed.

(4) The Survey Commissioner shall, while making any inquiry, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely:—

(a) summoning and examining any witness;

(b) requiring the discovery and production of any document;

(c) requisitioning any public record from any court or office;

(d) issuing commissions for the examination of any witness or accounts;

(e) making any local inspection or local investigation;

(f) such other matters as may be prescribed.

(5) If, during any such inquiry, any dispute arises as to whether a particular waqf is a Shia waqf or Sunni Waqf and there are clear indications in the deed of waqf as to its nature, the dispute shall be decided on the basis of such deed.

(6) The State Government may, by notification in the Official Gazette, direct the Survey Commissioner to make a second or subsequent survey of waqf properties in the State and the provisions of sub-sections (2), (3), (4) and (5) shall apply to such survey as they apply to a survey directed under sub-section (1):

Provided that no such second or subsequent survey shall be made until the expiry of a period of ten years from the date on which the report in relation to the immediately previous survey was submitted under sub-section (3)

Provided further that the waqf properties already notified shall not be reviewed again in subsequent survey except where the status of such property has been changed in accordance with the provisions of any law.

***5. Publication of list of auqaf**.—*

(1) On receipt of a report under sub-section (3) of section 4, the State Government shall forward a copy of the same to the Board.

(2) The Board shall examine the report forwarded to it under sub-section (1) and fordward it back to the Government within a period of six months for publication in the Official Gazette a list of Sunni auqaf or Shiaauqaf in the State, whether in existence at the commencement of this Act or coming into existence thereafter, to which the report relates, and containing such other particulars as may be prescribed.

(3) The revenue authorities shall—

(i) include the list of auqaf referred to in sub-section (2), while updating the land records; and

(ii) take into consideration the list of auqaf referred to in sub-section (2), while deciding mutation in the land records.

(4) The State Government shall maintain a record of the lists published under sub-section (2) from time to time.

243. Suffice to mention here that if it is assumed that under the notification of 1944, the suit property was notified as a waqf property, then the dispute should have been filed before the Waqf Tribunal in 1964. Institution of Suit No. 43 of 1967 before the Civil Court regarding the property of Katra Keshav Dev and its decision on the basis of the compromise dated 12.10.1968, *prima facie*, indicate that the property notified as waqf property under the above notification was not the suit property.

244. Perusal of the plaint of Suit No. 43 of 1967 goes to show that the suit was filed against several defendants including 'Trust Masjid Idgah under the alleged Committee of Management consisting of defendants no. 2 to 12 situated at Deeg Darwaza, Mathura'. The suit was filed on 16.05.1964. It clearly shows that the status of Masjid Idgah was addressed as **'trust'** and not as a **'waqf property'**. If the suit property was notified as waqf property by the notification dated 26.02.1944, the waqf should have been arrayed as one of the defendants.

245. It would not be out of place to mention here that in the present suits, the Waqf board is arrayed as one of the defendant merely because challenge lies to compromise dated 12.10.1968 which was entered by the Committee pursuant to permission accorded by the Waqf board and not because the suit property is admitted to be a waqf property.

246. The defendants have not brought on record any information to corroborate that the suit property was ever called as '*Idgah Masjid Aalmgiri'*. Almost all the plaints have described the defendants to be a trust and not

as waqf. Even in their application under Order VII Rule 11 of the CPC, the defendants have not mentioned the waqf number.

247. The present superstructure came into existence on the basis of the compromise dated 12.10.1968. It is also to be taken into consideration that during several rounds of litigation, prior to institution of Suit No. 43 of 1967 nowhere it was pleaded that the suit property was a waqf property.

248. In view of the foregoing observation and the averments made in the plaint, *prima facie,* it appears that the Notification dated 25.02.1944 does not relate to the suit property. Thus, at this stage it cannot be assumed that the suit property was notified as a 'waqf property' under this Notification.

249. Now I proceed to take up the question of jurisdiction of this Court as raised by learned Counsel for the defendants.

250. The relevant provisions of the Act of 1995 are quoted here as under:-

> ***6. Disputes regarding auqaf****.—(1) If any question arises whether a particular property specified as waqf property in the list of auqaf is waqf property or not or whether a waqf specified in such list is a Shia waqf or Sunni waqf, the Board or the mutawalli of the waqf or* ***any person aggrieved*** *may institute a suit in a Tribunal for the decision of the question and the decision of the Tribunal in respect of such matter shall be final:*
> *Provided that no such suit shall be entertained by the Tribunal after the expiry of one year from the date of the publication of the list of auqaf:*
> *Provided further that no suit shall be instituted before the Tribunal in respect of such properties notified in a second or subsequent survey pursuant to*

the provisions contained in sub-section (6) of section.

... ...

(2) Notwithstanding anything contained in sub-section (1), no proceeding under this Act in respect of any waqf shall be stayed by reason only of the pendency of any such suit or of any appeal or other proceeding arising out of such suit.

(3) The Survey Commissioner shall not be made a party to any suit under sub-section (1) and no suit, prosecution or other legal proceeding shall lie against him in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

(4) The list of auqaf shall, unless it is modified in pursuance of a decision of the Tribunal under sub-section (1), be final and conclusive.

(5) On and from the commencement of this Act in a State, no suit or other legal proceeding shall be instituted or commenced in a court in that State in relation to any question referred to in sub-section (1).

...

***85. Bar of jurisdiction of civil courts**.—No suit or other legal proceeding shall lie in any civil court, revenue court and any other authority in respect of any dispute, question or other matter relating to any waqf, waqf property or other matter which is required by or under this Act to be determined by a Tribunal.*

...

> ***108-A. Act to have overriding effect**.—The provisions of this Act shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.*

251. The learned Counsel for defendants heavily relied upon the judgement of **Rashid Wali Beg vs Farid Pindari** (supra) and submitted that the jurisdiction to decide every dispute in relation to a waqf property lies only with the Waqf Tribunal and not with the Civil Court.

252. On the contrary, the plaintiffs in their plaint have averred that the suit property has always been a Hindu property. Evidently, the plaintiffs have nowhere acknowledged the existence of any waqf.

253. To fully appreciate the decision rendered in the case **Rashid Wali Beg** (supra)**,** by the Hon'ble Apex Court, it would be appropriate to extract the relevant paragraphs which read thus :-

> ***4.*** *The case of the first respondent herein-plaintiff was that the suit property originally belonged to one Mirza Abid Ali Beg; that during his lifetime he created a Waqf-al-Aulad; that during his lifetime, Mirza Abid Ali Beg was the mutawalli; that after his lifetime, his elder daughter became the mutawalli; that thereafter, the younger daughter Smt Afzal Jahan Begum became the mutawalli; that the said Afzal Jahan Begum was the grandmother of the plaintiff; that the father of the plaintiff led a wayward life, forcing the grandmother to deliver possession of the property to the plaintiff, authorising him to maintain the properties*

and utilise the income thereof for the maintenance of the family; that after taking possession, the plaintiff constructed shops on the land and let them out to tenants; that after sometime, the grand-mother of the plaintiff appointed the father of the plaintiff as the mutawalli; that there were criminal proceedings between the plaintiff and his father; that on 18-12-2010, the defendants brought building materials and started digging foundation in the land behind the shops, at the instigation of the father of the plaintiff; that though the plaintiff gave a police complaint, they were indifferent, emboldening the defendants to raise a boundary wall in a portion of the land and that, therefore, the plaintiff was constrained to file a suit for mandatory and perpetual injunction.

5. After entering appearance in the suit, the appellant herein who was the first defendant, filed a written statement admitting the existence of the waqf and waqf property. Thereafter, he took out an application under Order 7 Rule 11 CPC for rejection of plaint, on the simple ground that the civil court has no jurisdiction to try a suit relating to what is admittedly a waqf property. The said application was allowed by the Civil Judge, Senior Division, Malihabad and the suit was dismissed.

... ...

8. Therefore, the only question that arises for our consideration in this appeal is as to whether a suit for permanent injunction in respect of a waqf property is maintainable in a civil court or not."

254. In the above case, it is evident that a written statement admitting the existence of waqf and the waqf property preceded the application under Order VII Rule 11 of the CPC. Therefore, the Hon'ble Apex Court observed that the only question that arose for their consideration was whether a suit for permanent injunction in respect of a waqf property is maintainable in a Civil Court.

255. After taking into consideration the entire legislative history, the Hon'ble Apex Court observed that:-

> ***"32. A cumulative reading of Sections 86, 89 and 90 would show that the bar of jurisdiction under Section 85 is not total and omnipotent and that there may be cases which could still be entertained by civil courts. In fact, Section 93 which prohibits the mutawalli from entering into a compromise with the opposite party in any suit, also refers to "court". Section 93 reads as follows:***
>
> ***"93. Bar to compromise of suits by or against mutawallis.—No suit or proceeding in any court by or against the mutawalli of a waqf relating to title to waqf property or the rights of the mutawalli shall be compromised without the sanction of the Board."***
>
> ***34. In view of the language employed in Sections 83 and 85, coupled with the reference to civil courts in Sections 86, 90 and 93, it appears that the question of bar of jurisdiction of the civil court, has been left by the lawmakers to the vagaries of judicial opinion and this has given***

rise to conflicting decisions, to some of which, we shall now turn our attention.

... ...

57. Thus the Act itself has created some confusion, leaving the rest to the courts to compound the conundrum. Sadly, the Amendment Act 27 of 2013 also did not address the problem fully."

(Emphasis Supplied)

256. Thus, the Hon'ble Apex Court came to a conclusion that there is no absolute bar on the jurisdiction of the Civil Court given the language employed in Section 83 and 85 read with Section 86, 90 and 93 of the Act. Therefore, at this stage, it cannot be concluded that the judgement of **Rashid Wali Beg (supra)** is applicable to the facts and circumstances of the present case.

257. This Court finds substance in the arguments made by the learned Counsel Sri Hari Shanker Jain that amendment in Section 6 of the Act of 1995, for substituting the phrase 'any person interested therein' with 'any person aggrieved' is prospective in nature and is effective from 01.11.2013.

258. Reliance is placed by the learned Counsel for the plaintiffs on **Radha Kishan case** (supra) which is a Full Bench decision rendered by the Hon'ble Apex Court. The relevant paragraphs are extracted herein below:

"32. In the present case, the Respondents 1 and 2 who are non-Muslims, contended that they are outside the scope of sub-section (1) of Section 6, and consequently, they have no right to file the suit contemplated by that sub-section and, therefore, the

list of wakfs published by the Board of Wakfs under sub-section (2) of Section 5 cannot be final and conclusive against them under sub-section (4) of Section 6. It was urged that Respondents 1 and 2 were wholly outside the purview of sub-section (1) of Section 6 and they must, therefore, necessarily fall outside the scope of the enquiry envisaged by sub-section (1) of Section 4, as the provisions contained in Sections 4, 5 and 6 form part of an integrated scheme. The question that arises for consideration, therefore, is as to who are the parties that could be taken to be concerned in a proceeding under sub-section (1) of Section 6 of the Act, and whether the list published under sub-section (2) of Section 5 declaring certain property to be wakf property, would bind a person who is neither a mutawalli nor a person interested in the wakf.

33. The answer to these questions must turn on the true meaning and construction of the word "therein" in the expression "any person interested therein" appearing in sub-section (1) of Section 6. In order to understand the meaning of the word "therein" in our view, it is necessary to refer to the preceding words 'the Board or the mutawalli of the wakf'. ***The word 'therein' must necessarily refer to the "wakf" which immediately precedes it. It cannot refer to the "wakf property". Sub-section (1) of Section 6 enumerates the persons who can file suits and also the questions in respect of which such suits can be filed. In enumerating the persons who are empowered to file suits under***

this provision, only the Board, the mutawalli of the wakf, and "any person interested therein", thereby necessarily meaning any person interested in the waqf, are listed. It should be borne in mind that the Act deals with wakfs, its institutions and its properties. It would, therefore, be logical and reasonable to infer that its provisions empower only those who are interested in the wakfs, to institute suits.

... ...

***39. It follows that where a stranger who is a non-Muslim and is in possession of a certain property his right, title and interest therein cannot be put in jeopardy merely because the property is included in the list. Such a person is not required to file a suit for a declaration of his title within a period of one year. The special rule of limitation laid down in proviso to sub-section (1) of Section 6 is not applicable to him. In other words, the list published by the Board of Wakfs under sub-section (2) of Section 5 can be challenged by him by filing a suit for declaration of title even after the expiry of the period of one year, if the necessity of filing such suit arises*".**

(Emphasis Supplied)

259. In **Salim Muslim Burial Ground Protection Committee vs. State of Tamilnadu and others** (supra), it is observed that:

" 32. A plain reading of the provisions of the above two Acts would reveal that the notification

under Section 5 of both the Acts declaring the list of the wakfs shall only be published after completion of the process as laid down under Section 4 of the above Acts, which provides for two surveys, settlement of disputes arising thereto and the submission of the report to the State Government and to the Board. Therefore, conducting of the surveys before declaring a property a wakf property is a sine qua non. *In the case at hand, there is no material or evidence on record that before issuing notification under Section 5 of the Wakf Act, 1954, any procedure or the survey was conducted as contemplated by Section 4 of the Act. In the absence of such a material, the mere issuance of the notification under Section 5 of the Act would not constitute a valid wakf in respect of the suit land. Therefore, the notification dated 29.04.1959 is not a conclusive proof of the fact that the suit land is a wakf property. It is for this reason probably that the appellant Committee had never pressed the said notification into service up till 1999".*

(Emphasis Supplied)

260. **In Punjab Waqf Board vs. Shyam Singh Harika** (supra), the Hon'ble Apex Court observed that:

> ***"28.*** *This Court noticed in the aforesaid judgment that there is a cleavage in the judicial opinion expressed on the question of jurisdiction of the Wakf Tribunal by the different High Courts in the country. High Courts have taken the view that jurisdiction of the Wakf Tribunal is wide enough to*

entertain and adjudicate upon all kinds of disputes which relate to any wakf property

> ***"24. … A plain reading of the above would show that the civil court's jurisdiction is excluded only in cases where the matter in dispute is required under the Act to be determined by the Tribunal. The words "which is required by or under this Act to be determined by a Tribunal" holds the key to the question whether or not all disputes concerning the wakf or wakf property stand excluded from the jurisdiction of the civil court.***
>
> ***
>
> *28. Section 85 of the Act clearly bars jurisdiction of the civil courts to entertain any suit or proceedings in relation to orders passed by or proceedings that may be commenced before the Tribunal. It follows that although Section 85 is wider than what is contained in Sections 6 and 7 of the Act, the exclusion of jurisdiction of the civil courts even under Section 85 is not absolute. It is limited only to matters that are required by the Act to be determined by a Tribunal. So long as the dispute or question raised before the civil court does not fall within the four corners of the powers vested in the Tribunal, the jurisdiction of the former to entertain a*

suit or proceedings in relation to any such question cannot be said to be barred."

... ...

33. *After the judgment of this Court in Ramesh Gobindram [Ramesh Gobindram v. Sugra Humayun Mirza Wakf, (2010) 8 SCC 726 : there are several two-Judge judgments of this Court either following Ramesh Gobindram judgment or distinguishing the same on one or other reasons. This Court in Bhanwar Lal v. Rajasthan Board of Muslim Wakf elaborately noticed the judgment of Ramesh Gobindram case. This Court ultimately in the facts of that case held that since the suit was filed much before the enforcement of the Act i.e. 1-1-1996, in view of the dictum laid down in Sardar Khan v. Syed Najmul Hasan, (2007) 10 SCC 727] , the civil court where the suit was filed shall continue to have jurisdiction. In para 30 following has been laid down:-*

"30. The suit is for cancellation of sale deed, rent and for possession as well as rendition of accounts and for removal of trustees. However, pleadings in the suit are not filed before us and, therefore, the exact nature of relief claimed as well as the averments made in the plaint or written statements are not known to us. We are making these remarks for the reason that some of the reliefs claimed in the suit appeared to be falling within the exclusive jurisdiction of

the Tribunal whereas for other reliefs the civil court would be competent. Going by the ratio of Ramesh Gobindram, suit for possession and rent is to be tried by the civil court. However, the suit pertaining to removal of trustees and rendition of accounts would fall within the domain of the Tribunal. Insofar as relief of cancellation of sale deed is concerned this is to be tried by the civil court for the reason that it is not covered by Section 6 or 7 of the Act whereby any jurisdiction is conferred upon the Tribunal to decide such an issue. Moreover, relief of possession, which can be given by the civil court, depends upon the question as to whether the sale deed is valid or not. Thus, the issues of sale deed and possession are inextricably mixed with each other. We have made these observations to clarify the legal position. Insofar as the present case is concerned, since the suit was filed much before the Act came into force, going by the dicta laid down in Sardar Khan case, it is the civil court where the suit was filed will continue to have the jurisdiction over the issue and the civil court would be competent to decide the same."

(Emphasis Supplied)

261. In view of the above, it appears that the Waqf Tribunal has no jurisdiction to decide the issues involved in the present suits. Since, there is no

admission on the part of the plaintiffs that the suit property is a waqf property, therefore, question of jurisdiction does not arise at this stage.

262. Documentary evidence corroborating the averments made in plaints are brought on record by the plaintiffs. Whereas, except for the Notification dated 25.02.1944, no other evidence is filed by the defendants. The evidence filed by the plaintiffs and the notification filed by the defendants are subject to evidence to be led by the parties during the trial.

263. It is also to be noted that the sale deed dated 8.2.1944 and trust deed dated 9.3.1951 are more than 30 years old documents. Therefore, as per Section 90 of the Evidence Act, 1872, their genuineness may be presumed, unless rebutted by the defendants.

264. In view of the above, considering the facts and circumstances of the case, averments made in the plaint and the legal proposition referred by the rival parties, it cannot be assumed that the suit property is a waqf property. All the facts and circumstances of the case are subject to appreciation of oral and documentary evidence to be led by the parties during the trial. Therefore, at this stage I am of the view that the suits are not barred under any provision of the Act of 1995.

(vi) Bar under the Specific Relief Act, 1963:

265. Mrs. Tasneem Ahmadi, learned Counsel for the defendants submitted that the suits of the plaintiffs are barred by Section 34 of the Specific Relief Act, 1963. The plaintiffs did not seek the relief of possession in their plaints. It is an admission on part of the plaintiffs they are not in possession over the suit property. Present suits have been filed for granting a decree for declaration and injunction. Mere declaration of title is not enough. Since no relief for delivery of possession is sought, therefore, relief of injunction cannot be granted. The ancillary relief claimed by the plaintiffs does not fall under the provisions of Sections 5 and 6 of the Specific Relief Act, 1963.

266. Per contra, it is submitted on behalf of the plaintiffs that the suit property is a temple and idol is in constructive possession at all times. The plaintiffs have claimed relief that the suits of the plaintiffs be decreed against the defendants directing them to remove the illegal constructions raised by them, encroaching upon the land within the area of Katra Keshav Dev, Mathura and to hand over vacant possession to the Janmabhoomi Trust within the time provided by the Court.

267. Section 34 of the Specific Relief Act, 1963 provides that:-

> *34.* ***Discretion of court as to declaration of status or right.***
>
> *'Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:*
>
> *Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so."*

268. Perusal of the plaints goes to show that the plaintiffs nowhere have admitted lawful possession of the defendants over the suit property. It is the case of the plaintiffs that pursuant to illegal, fraudulent and *void ab initio* compromise dated 12.10.1968, two bigha land, within the area of Katra Keshav Dev, which was a part of the temple, was conceded to the defendant. Suit No. 43 of 1967 was filed on the basis of fraud and misrepresentation. Therefore, the decree was also based on fraud and misrepresentation. It was obtained to defeat the interest of the deity. Hence, any illegal construction carried out pursuant to the compromise dated 12.10.1968 is not admitted to the plaintiffs.

269. Perusal of the relief clauses of the respective plaints reveals that the relief of decree of mandatory injunction is claimed by the plaintiffs. It is also claimed that the defendants be directed to remove the constructions raised by them as shown in the site plan within the area of Katra Keshav Dev, Mathura and to hand over vacant possession to the Janmabhoomi Trust. Applicable Court fee is also paid by the plaintiffs for this relief.

270. As per the averments made in the plaints, the plaintiffs claim that they were in possession since time immemorial and mere demolition of the temple by the intruders, did not result in their ouster as they contined to be in possession over the suit property from time to time and from regime to regime. The defendants claim the existence of the mosque only from 1669, when Aurangzeb constructed the mosque over the suit property.

271. It is to be taken into consideration that Aurangzeb did not construct the mosque on the vacant land. It is the case of the plaintiffs that Aurangzeb partially demolished the temple and constructed a superstructure, which is called as Shahi Masjid Idgah. The defendants did not claim their possession prior to 1669. In contrast, the plaintiffs have averred in their respective plaints that Brijnabha, the great grandson of Lord Shree Krishna constructed a temple at Katra Keshav Dev 5000 years ago.

272. The plaintiffs have claimed the relief for cancellation of judgement and decree dated 20.07.1973 and judgment and decree dated 07.11.1974 passed in Suit No. 43 of 1967. Therefore, it cannot be assumed that the plaintiffs have admitted the lawful possession of the defendants over the suit property.

273. The constructive possession of the deity over the land from the time immemorial and the legality and validity of the compromise dated 12.10.1968 are questions of fact that can only be proved by the evidence to be led during the trial. The question that the suits of the plaintiffs are

barred by Section 34 of the Specific Relief Act,1963 can only be decided after framing a proper issues on the basis of the pleadings of the parties during the trial after taking and appreciating evidence led by the parties. What relief can and can not be granted has to be decided by this Court on the basis of the pleadings and evidence available on record. Beside this, the plaintiffs have claimed several reliefs such as cancellation, declaration, mandatory injunction as well as for possession which are subject to evidence to be led during the trial. The question whether the suit is barred by Section 34 of the Specific Relief Act,1963 cannot be decided at this stage without taking and appreciating the evidence of the parties to be led during the trial.

274. In view of the foregoing discussions, in my opinion, it appears that the suits of the plaintiffs are not barred by provisions of Section 34 of the Specific Relief Act,1963.

Conclusion:

275. On reading of the plaints as a whole and in a meaningful manner, perusal of the material placed on records, consideration of the arguments advanced by the rival parties, and settled legal propositions, I conclude that the plaints in all the suits of the plaintiffs disclose a cause of action and they do not appear to be barred by any provisions of the Waqf Act, 1995; the Places of Worship (Special Provisions) Act, 1991; the Specific Relief Act, 1963; the Limitation Act, 1963 and Order XIII Rule 3A of the Code of Civil Procedure Code, 1908.

276. Therefore, the applications for rejection of plaints moved by defendants no.1 and 2 in respective suits, numbered as A-17, A-18 and A-37 in OSUT No.01 of 2023; C-57 and C-69 in OSUT No.02 of 2023; C-20 and C-45 in OSUT No.04 of 2023; 14-Ka and A-14 in OSUT No.05 of 2023; A-20, A-30 and A-32 in OSUT No.06 of 2023; A-16 and A-39 in OSUT No.07 of 2023; A-21, A-22 and C-23 in OSUT No.09 of 2023; A-9 in OSUT No.11 of 2023; C-30 and C-49 in OSUT No.12 of 2023; C-36

and A-46 in OSUT No.13 of 2023; C-18 and C-23 in OSUT No.14 of 2023; C-12 and C-22 in OSUT No.15 of 2023; A-7, A-17 and A-18 in OSUT No.16 of 2023; A-14 in OSUT No.17 of 2023; and A-7 in OSUT No.18 of 2023, are liable to be rejected.

277. Accordingly, all the aforesaid applications are hereby **rejected**.

278. Valuable assistance rendered by my Research Associate, Ms Varnika Srivastava, is appreciated.

279. Put up on **12.8.2024 at 2:00 pm**, for issues.

(**Mayank Kumar Jain, J**.)

Dated: 1st August, 2024
RKK/Mohit/Rashmi